

United States
Circuit Court of Appeals

For the Ninth Circuit.

JOHN TUPPELA, J. H. COBB, as Trustee for
JOHN TUPPELA, and GROVER C.
WINN, as Guardian of the Person of JOHN
TUPPELA,

Plaintiffs in Error,

vs.

ENOCH E. MATHISON,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Alaska, Division No. 1.

FILED

FEB 14 1923

F. D. MONCKTON,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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Attorneys for Plaintiff in Error.

JOSEPH MANNIX, Esq., Astoria, Oregon, and
R. E. ROBERTSON, Esq., Juneau, Alaska,
Attorneys for Defendant in Error.

In the United States District Court for the Dis-
trict of Alaska, Division No. 1, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB, as Trustee for
JOHN TUPPELA, and GROVER C.
WINN, as Guardian of the Person of JOHN
TUPPELA,

Defendants.

Complaint.

Comes now the plaintiff in the above-entitled
court and cause, and, for his first and separate cause
of action, complains of the defendants herein, and
alleges:

I.

That heretofore, and at all times material herein,
and on or about the 11th day of March, 1918, the

plaintiff was and still is an attorney and counsellor at law, duly licensed and qualified to carry on the general practice of law, and having his office and general place of business in Astoria, Clatsop County, Oregon.

II.

That heretofore, and on or about the 19th day of August, 1920, by an instrument of writing the defendant Tuppela herein conveyed all of his right, title and interest in and to all of his property to J. H. Cobb, defendant herein, in trust, however, subject only to certain reservations enumerated in said writing. That by virtue of said trust agreement the said J. H. Cobb on or about said date became trustee of all the property and estate of the said defendant Tuppela, and ever since said date and now is acting as said trustee. That said trust agreement was so drawn, witnessed and acknowledged as to [1*] entitle the same to be recorded, and the same was thereafter recorded on the 21st day of August, 1920, in the Record of Deeds, Book 3, page 420, of the records of the Recording District of Sitka (No. 4) Division No. 1, District of Alaska.

III.

That heretofore, and on or about the 28th day of July, 1921, by an order duly and regularly made in the United States Commissioner's Court, which is *ex officio* the Probate Court for the Territory of Alaska, Division No. 1, Precinct of Juneau, the said John Tuppela was pronounced to be an insane

*Page-number appearing at foot of page of original certified Transcript of Record.

person and incapable of taking care of himself or of moneys paid to him for his support, and on said date Grover C. Winn was by an order of said Court duly appointed as guardian of the person of said John Tuppela, and ever since said date and now the said Grover C. Winn has been and is duly acting as such guardian.

IV.

That a contract was entered into on or about the 11th day of March, 1918, by and between the plaintiff and defendant Tuppela herein, parties herein, wherein and whereby the said defendant engaged, retained and employed the plaintiff as an attorney at law to prosecute to final determination certain claims that Tuppela had in and to the following described properties: that is to say, the "Over the Hill," "Pacific," "Golden West," "Rising Sun," and "Porphyry" lode mining claims located at or near Chichagoff, in the Sitka Recording Precinct, Territory of Alaska.

That it was stipulated in said contract that the title of said defendant to said claims was in dispute, as well as the right of said defendant to the earnings produced from the development of certain of said properties. It was further stipulated in said contract that plaintiff was to have the exclusive right to prosecute said claims; that he was to exercise his own best judgment in all matters pertaining [2] to the prosecution of said claims, and if he deemed it necessary, was to have the right to select such an attorney or attorneys as

he deemed suitable as assistants in said proceedings.

In consideration of said services and covenants undertaken by said plaintiff, it was agreed by said defendant in said contract that plaintiff was to receive one-half of all property recovered in said proceeding, or in case of sale thereof then one-half of the proceeds of said sale, and in the event that any damages should be recovered against any parties holding said property adversely to said defendant, then the plaintiff was to receive one-half of any such damages.

Said contract was so witnessed, acknowledged, executed and delivered as to entitle the same to be recorded, and the same was thereafter on the 27th day of August, 1921, recorded in Deeds, Record Book No. 4, pages 116, 117, of the records of the Recording District of Sitka (No. 4) Division No. 1, District of Alaska.

V.

Upon the execution of said contract said plaintiff commenced work pursuant to the terms thereof, and diligently and skillfully ascertained as far as possible all of the facts deemed material by him to the proper prosecution of said claims. That for a period of over five (5) months plaintiff was in frequent consultation with said defendant and others who had knowledge of certain facts pertaining to the matter in controversy, and during said period plaintiff carefully, diligently and skillfully examined all of the legal principles, statutes and court decisions which had a bearing on the facts in

said cause, for the purpose of successfully establishing and recovering by suit, or otherwise, said defendant's interests and rights in and to said properties.

VI.

That in the course of said investigation it developed and came to the attention of plaintiff that there were certain witnesses and [3] private documents, known to Tuppela to be in Alaska, that were of paramount importance for the proper prosecution of said claims. That in the execution of said contract it was contemplated by the respective parties, and implied in the terms thereof, that said defendant would furnish all of the information possible, and all papers and documents in his possession or that he might be able to obtain and which might be required of him by plaintiff in the proper preparation and prosecution of said claims. That plaintiff contemplated the institution of legal proceedings against the Chichagoff Mining Co., a corporation, for the recovery of the said defendant's interests in said properties and all moneys due said defendant because of the withholding from said defendant and depriving him thereof and because of the development of the same, and that it was mutually agreed between plaintiff and said defendant that said defendant would go to Alaska as soon as possible to obtain an interview with certain important witnesses and procure certain letters and documents which were important to be had at that time.

VII.

Thereafter, and in pursuance of said agreement with plaintiff, said defendant left said Astoria on or about the — day of September, 1918, for the purpose of going to Juneau, Alaska, getting the information, documents and letters required, and returning to Astoria at the earliest date possible.

VIII.

That ever since said date plaintiff has never heard directly from said defendant, and said defendant never thereafter communicated with plaintiff, nor furnished him with said information, letters or documents. That because of the action of said defendant in the respect just noted the said defendant breached his covenants under said contract, and by his action discharged plaintiff, and [4] and prevented and made it impossible for the plaintiff to do anything further toward prosecuting said claims or otherwise carrying out the covenants of said contract. That at all times material herein the said plaintiff was ready, able and willing to proceed with, and to diligently and faithfully carry out the covenants made by him in said contract, and offered Tuppela his services at all times in conformity with the terms of said contract.

IX.

That pursuant to the terms of said contract and at said Tuppela's request plaintiff employed a large portion of his time during said five months in working for said defendant, and was thereby prevented from attending to a large portion of his other cases

and general office business; that said plaintiff spent his time and money on behalf of said defendant, and assumed the responsibility of a large and difficult legal proceeding. That because of said contract said plaintiff was prevented from being employed as an attorney for any other party in the prosecution of said claims, and was prevented from seeking employment from others in the prosecution of said claims. That because of said labor, time and responsibility, under the terms of said contract there became due and owing plaintiff by said defendant at the time of the breach of said contract, as herein alleged, a reasonable sum of money as compensation for such services, time and responsibility, and that the said plaintiff now alleges that the sum of \$150,000.00 is a reasonable sum to be allowed him as compensation.

X.

That all of said claims described herein, and with respect to which said contract was entered, as alleged, between plaintiff and said defendant, both as to the mining properties and claims, and as to the earnings thereof, were on the date of said contract justly owned by and due to said defendant, and were enforceable, recoverable [5] and collectible on said date.

XI.

That said defendant on or about the — day of September, 1918, in violation of his covenants in said contract, engaged, employed and retained other attorneys and proceeded with the prosecution of his said claims to the properties and rights therein

described in paragraph IV of this complaint and described in said contract, and as a result of said action on the part of said defendant, judgment and decree was thereafter entered in the United States Court of Appeals for the Ninth Circuit, on or about the 20th day of July, 1920, in that cause wherein John Tuppela, defendant herein, was plaintiff, and the Chichagoff Mining Co., a corporation, was defendant. That by the terms of said decree said defendant recovered a one-half interest in the "Over the Hill" and "Pacific" lode mining claims, together with the whole of the "Rising Sun" lode mining claim. Said decree further provided for a conveyance to be made by the said Chichagoff Mining Co. to said defendant in accordance with said decree, and that an accounting be rendered by the Chichagoff Mining Co. of all ores extracted from said mines, and that after deducting operating expenses in the extraction of said ores a judgment be rendered on said accounting in favor of said defendant for the value of said ore as his interest may appear in the property from which the ore was taken. Said decree further provided that said defendant recover his costs in said proceeding.

XII.

That pursuant to said decree a settlement was had between said defendant Tuppela and the Chichagoff Mining Co., and under the terms of said settlement it was stipulated between the respective parties that said mining properties were worth, and plaintiff alleges that they were worth not less than, \$1,200,000.00; that Tuppela should receive

\$300,000.00 cash as his share of the net earnings thereof, and \$—— cash as his costs in said legal proceeding. That in accordance with [6] the terms of said settlement said defendant received conveyances to a one-half interest in said “Over the Hill” and “Pacific” lode mining claims and to the whole of the “Rising Sun” lode mining claim and also received \$300,000.00 cash, plus \$—— cash, costs of said legal proceeding, and that said Tup-pela ever since said date and now is the owner of said property and money, of which said defendant Cobb is now the trustee under said trusteeship agreement with said Tuppela.

XIII.

That the claims prosecuted to a successful determination as described in paragraph XII above are the identical claims described in said contract between plaintiff and said defendant, and the properties and subject matter of the suit and decree entered thereon as described in said paragraph XII are the same as those set forth in said contract.

XIV.

That plaintiff has made demand upon said defendant for the payment of the reasonable value of his services as described herein but that said defendant has failed, neglected and refused to pay the plaintiff, and plaintiff has received nothing for said services.

Plaintiff for his second, further and separate cause of action complains of the defendants, and for cause of action alleges:

I.

That heretofore, and at all times material herein, and on or about the 11th day of March, 1918, the plaintiff was and still is an attorney and counsellor at law, duly licensed and qualified to carry on the general practice of law, and having his office and general place of business in Astoria, Clatsop County, Oregon.

II.

That heretofore, and on or about the 19th day of August, 1920, by an instrument of writing the defendant Tuppela herein conveyed all of his right, title and interest in and to all of his property to J. H. Cobb, defendant herein, in trust, however, subject only to [7] certain reservations enumerated in said writing. That by virtue of said trust agreement the said J. H. Cobb on or about said date became trustee of all the property and estate of the said defendant Tuppela, and ever since said date and now is acting as said trustee. That said trust agreement was so drawn, witnessed and acknowledged as to entitle the same to be recorded, and the same was thereafter recorded on the 21st day of August, 1920, in the Record of Deeds, Book 3, page 420, of the records of the Recording District of Sitka (No. 4) Division No. 1, District of Alaska.

III.

That heretofore, and on or about the 28th day of July, 1921, by an order duly and regularly made in the United States Commissioner's Court, which is *ex officio* the Probate Court for the Territory

of Alaska, Division No. 1, Precinct of Juneau, the said John Tuppela was pronounced to be an insane person and incapable of taking care of himself or of moneys paid to him for his support, and on said date Grover C. Winn was by an order of said Court duly appointed as guardian of the person of said John Tuppela, and ever since said date and now the said Grover C. Winn has been and is duly acting as such guardian.

IV.

That on or about the 11th day of March, 1918, John Tuppela, defendant herein, entered into a contract with said plaintiff wherein and whereby said defendant engaged, employed and retained said plaintiff as an attorney at law for the purpose of taking any necessary proceedings for the recovery of certain mining properties and money which said defendant claimed to own, which had been wrongfully taken from him; that said properties were described in said contract as follows, to wit: "Over the Hill," "Pacific," "Golden West," "Rising Sun," and the "Porphyry" lode mining claims, all located at Chichagoff, in the Sitka Recording Precinct of the Territory of Alaska. It was further set forth in said contract [8] that the title to said property and other properties of said defendant was in dispute, and that said plaintiff was thereby employed as an attorney at law to act for the said defendant and in his stead in all matters pertaining to the prosecution of the claims of said defendant set out in said contract.

That said plaintiff as such attorney was to act for said defendant in all courts in which it may be deemed necessary to prosecute said claims, to the end that a complete adjustment and settlement be made of all said claims; that said contract further provided that said plaintiff was to have the exclusive right to prosecute said claims and was to use his best judgment in the time and manner of such prosecution.

In consideration of such action and services of the plaintiff said contract provided that plaintiff was to receive as his pay, one-half of the interest recovered by said defendant in and to the properties described herein and described in said contract, or in case of a sale of said properties plaintiff was to receive one-half of the proceeds of such sale. It was further provided in said contract that in the event that any damages should be recovered by said defendant from any parties claiming an interest in said property adverse to said defendant that said defendant should pay plaintiff one-half of any such money damages collected.

Said contract further provided that plaintiff was to have exclusive control of the prosecution of all such claims to such properties on behalf of said defendant, and was to exercise his best judgment in the protection and assertion of the claims of said defendant; that said plaintiff was to have the exclusive right to collect all moneys due said defendant upon said claims, and was to have the right to employ associate attorneys in case plaintiff should wish for an assistant; that said contract was wit-

nessed, acknowledged and delivered in such a manner as to entitle the same to be recorded, and the same was thereafter [9] recorded on the 27th day of August, 1917, in Deeds Record Book No. 4, pages 116-117 of the Records of the Recording District of Sitka (No. 4), Division No. 1, District of Alaska.

V.

That pursuant to the terms of said contract said plaintiff faithfully and diligently performed each and all of the covenants therein contained and undertaken therein by said plaintiff; that plaintiff made thorough investigation of the facts in respect to said claims and the law applicable thereto, and during a period of five months plaintiff labored in said cause and devoted a large portion of said time to the preparation of said cause under the terms of said contract; that because of said contract the plaintiff was bound to carry on the prosecution of said claims on behalf of said defendant, and was thereby prevented from acting as an attorney for any of the other parties in the matter of the prosecution of said claims. That because of the fact that the plaintiff was a party to said contract with said defendants said plaintiff was compelled to neglect and did actually neglect the other business which said plaintiff had in his said law office during said period of time, and was prevented from devoting his time to the prosecution of other business, and was compelled to remain at his said office during said period of time, holding himself in readiness at all times to carry on the work called

for in said contract to be performed by said plaintiff.

VI.

That on or about the — day of September, 1918, the said defendant without just or legal cause, and without any sufficient reason therefor, breached said contract and discharged plaintiff from further control or participation in the prosecution of said claims and in violation of the terms of said contract; that plaintiff had at all times diligently and faithfully carried out the work under said [10] contract contracted to be performed by him, and that the plaintiff was at all times material therein, ready, able and willing to proceed with the prosecution of said claims, and to fulfill his covenants under said contract, and offered said defendant his services under said contract but that said defendant refused said services without legal or sufficient cause for said refusal, and discharged plaintiff, and thereby rendered the performance of said contract on the part of the plaintiff according to the terms thereof, impossible.

VII.

That defendant on or about the — day of September, 1918, in violation of his covenants in said contract, engaged, employed and retained other attorneys, and proceeded with the prosecution of his said claims to the properties described in paragraph IV herein, and described in said contract, and as a result of said action on the part of said defendant a judgment and decree was thereafter entered in the United States Circuit

Court of Appeals for the Ninth Circuit, on or about the 20th day of July, 1920, in that cause wherein John Tuppela, defendant herein, was plaintiff, and the Chichagoff Mining Co., a corporation, was defendant, and by the terms of said decree said defendant recovered a one-half interest in the "Over the Hill" and "Pacific" lode mining claims, together with the whole of the "Rising Sun" lode mining claim. Said decree further provided that a conveyance be made of said properties by the said Chichagoff Mining Co. to said defendant; that an accounting be had of all ores extracted by said Chichagoff Mining Co. for said mines, and that a judgment be entered in favor of said defendant Tuppela according to his interest in said properties, for the value of said ores, as described in said decree, first deducting the cost of mining and extracting said ores. And said decree further provided that said Tuppela recover his costs in said proceeding. [11]

VIII.

That pursuant to said decree a settlement was had between said Tuppela and said Chichagoff Mining Co., and under the terms of said settlement it was stipulated between the respective parties that said mining properties were worth, and plaintiff alleges that they were worth not less than, \$1,200,000.00, and that said Tuppela should receive \$300,000.00 cash as his share of the earnings thereof, and \$—— cash as his costs in the legal proceedings; that in accordance with the terms of said settlement said Tuppela received conveyances

to a one-half interest in said "Over the Hill" and "Pacific" lode mining claims, and to whole of the "Rising Sun," and also received \$300,000.00 in cash, plus \$—— cash, costs of said legal proceedings.

IX.

That the "Over the Hill," "Pacific," and "Rising Sun" lode mining claims described in the decree hereinabove referred to, and that the claims prosecuted by John Tuppela, defendant herein, in the case of John Tuppela, plaintiff, vs. Chichagoff Mining Co., defendant, referred to above, were the same properties and the same claims described in the contract between plaintiff and said Tuppela hereinabove referred to, and that said claims at the time of the execution of said contract were capable of being enforced, and that the moneys due said defendant from said properties on said date were collectible. That the very matters contained in said contract were the very same matters, the very same claims, and the very same property, interests and rights which said defendant asserted, presented and gained through the legal proceedings instituted against said Chichagoff Mining Co., as hereinabove described.

X.

That the services rendered said defendant by the plaintiff herein were and are of great value to said defendant, and that the said [12] contract entered into on the 11th day of March, 1918, by the said defendant and plaintiff was a contract of great value to the plaintiff, and that the breach

of said contract on the part of said defendant in the manner set forth in this part of the complaint caused great damage to the plaintiff as he now alleges in the sum of \$450,000.00; that but for said breach of contract said plaintiff would have successfully prosecuted said claims and would have earned, received and realized from said contract the said sum of \$450,000.00 but that through the breach of said contract as herein alleged said plaintiff was deprived wholly of said sum which otherwise he would have earned, received and realized, and that he has received nothing under the terms of said contract.

For a third, further and separate cause the plaintiff complains of the defendants, and for cause of action alleges:

I.

That heretofore, and at all times material herein, and on or about the 11th day of March, 1918, the plaintiff was and still is an attorney and counsellor at law, duly licensed and qualified to carry on the general practice of law, and having his office and general place of business in Astoria, Clatsop County, Oregon.

II.

That heretofore, and on or about the 19th day of August, 1920, by an instrument of writing the defendant Tuppela herein conveyed all of his right, title and interest in and to all of his property to J. H. Cobb, defendant herein, in trust, however, subject only to certain reservations enumerated in said writing. That by virtue of said trust agree-

ment the said J. H. Cobb on or about said date became trustee of all the property and estate of the said defendant Tuppela, and ever since said date and now is [13] acting as said trustee. That said trust agreement was so drawn, witnessed and acknowledged as to entitle the same to be recorded, and the same was thereafter recorded on the 21st day of August, 1920, in the Record of Deeds, Book 3, page 420, of the records of the Recording District of Sitka (No. 4), Division No. 1, District of Alaska.

III

That heretofore, and on or about the 28th day of July, 1921, by an order duly and regularly made in the United States Commissioner's Court which is *ex officio* the Probate Court for the Territory of Alaska, Division No. 1, Precinct of Juneau, the said John Tuppela was pronounced to be an insane person and incapable of taking care of himself or of moneys paid to him for his support, and on said date Grover C. Winn was by an order of said Court duly appointed as guardian of the person of said John Tuppela, and ever since said date and now the said Grover C. Winn has been and is duly acting as such guardian.

IV.

That heretofore, and between the 11th day of March, 1918, and the 30th day of August, 1918, at the special instance and request of defendant, John Tuppela, the plaintiff advanced and loaned to defendant certain sums of money aggregating \$362.50, an itemized statement of which is hereto attached,

made a part hereof, and marked Plaintiff's Exhibit "A."

V.

That defendant promised and agreed to repay plaintiff said sum of \$362.50 within a reasonable time thereafter but that defendant has failed, neglected and refused to pay said sum or any part thereof to plaintiff although demand has been made on said defendant by plaintiff for payment of the same, and the full sum of \$362.50 is at this time due plaintiff. [14]

WHEREFORE, plaintiff prays for judgment against John Tuppela, defendant herein, and against the other defendants in their respective capacities in the following respect:

1. For the sum of \$150,000.00 with interest thereon from and after October 1st, 1918, at 8% per annum, as in accordance with the allegations of the first and separate cause of action herein.

2. For the sum of \$450,000.00 in accordance with the allegations of the second, further and separate cause of action herein.

3. For the sum of \$362.50 in accordance with the allegations of the third, further and separate cause of action herein, with interest thereon from October 1, 1918, at 8% per annum.

4. For cost and disbursements in this action.

MATHISON & MANNIX,
By JOSEPH MANNIX,
R. E. ROBERTSON,
Attorneys for Plaintiff. [15]

Exhibit "A."

JOHN TUPPELA

to

ENOCH E. MATHISON, Dr.

To money loaned:

1918

March	11	.....	\$ 8.00
	18	.....	8.25
	23	.....	12.00
	30	.....	10.00
April	12	.....	10.00
	16	.....	5.00
	22	.....	15.00
	30	.....	12.00
May	6	.....	5.00
	11	.....	6.00
	15	.....	2.25
	18	.....	12.00
	22	.....	8.00
	30	.....	10.00
June	5	.....	15.00
	10	.....	10.00
	15	.....	15.00
	18	.....	3.00
	25	.....	15.00
	29	.....	5.00
July	3	.....	10.00
	6	.....	60.00
	17	.....	8.00
	19	.....	5.00
	22	.....	10.00
	27	.....	15.00

1918.

Aug.	7	.....	10.00
	12	.....	10.00
	16	.....	15.00
	20	.....	8.00
			25.00

\$362.50

Filed in the District Court, District of Alaska,
First Division. Oct. 13, 1921. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [16]

State of Oregon,
County of Clatsop,—ss.

I, Enoch E. Mathison being first duly sworn, says:
That I am the plaintiff in the above-entitled cause,
and that the facts stated in the foregoing complaint
are true, as I verily believe.

ENOCH E. MATHISON.

Subscribed and sworn to before me this 3d day
of Oct., 1921.

[Notary Seal]

JOSEPH MANNIX,
Notary Public for Oregon.

My commission expires Nov. 2, 1923.

Filed in the District Court, District of Alaska,
First Division. Oct. 13, 1921. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [17]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB, as Trustee for
JOHN TUPPELA, and GROVER C.
WINN, as Guardian of the Person of JOHN
TUPPELA,

Defendants.

Second Amended Answer.

Leave of the Court first being had, defendants amend their amended answer herein so that the same shall hereafter read as follows:

Now come the defendant John Tuppela by his guardian *ad litem*, and the defendants John H. Cobb, as trustee for John Tuppela, and Grover C. Winn, as guardian of the person of John Tuppela, by their attorneys, and, answering the complaint of the plaintiff herein, deny and allege as follows:

Referring to paragraph I of the first and separate cause of action in said complaint contained, these defendants have no knowledge or information as to the matters therein alleged and they, therefore, deny the same.

Referring to the fourth paragraph of the said first cause of action, these defendants admit that a contract in writing between the plaintiff and the defendant John Tuppela was made on or about

the 11th day of March, 1918, but they deny that the contract alleged was the contract so made, and allege that the contract actually entered into was as thereinafter more particularly set out. [18]

Referring to paragraphs V and VI of said first cause of action, these defendants deny all and singular the allegations therein contained.

Referring to paragraph VII, these defendants admit that the defendant Tuppela left Astoria, Oregon, for the purpose of coming to Juneau on or about the 30th day of September, 1918, but they deny, all and singular, the other and further remaining allegations in said paragraph contained.

Referring to paragraph VIII, these defendants deny, all and singular, the allegations therein contained.

Referring to paragraph IX, these defendants deny, all and singular, the allegations therein contained.

Referring to paragraph XI, these defendants deny that the defendant Tuppela, on or about the — day of September, 1918, in violation of the covenants in said contract or otherwise, engaged, employed and retained other attorneys and proceeded with the prosecution of his said claims to the properties and rights therein described in paragraph IV of the complaint. They admit that the decree mentioned in said paragraph was duly entered by the United States Circuit Court of Appeals for the Ninth Circuit, as therein alleged, but they deny that the same was the result of any action taken by said Tuppela in September, 1918.

Referring to paragraph XII of said complaint, these defendants deny, all and singular, the allegations therein contained.

Referring to plaintiff's further and separate cause of action and to the first paragraph thereof, these defendants have no knowledge and information concerning the matters and things therein alleged, and, therefore, deny the same.

Referring to paragraph IV of said second cause of action, these defendants admit that a contract was made between the plaintiff and the defendant Tuppela on or about the 11th day of March, 1918, but [19] they deny that said contract is in terms and effect as alleged by the plaintiff, but the real contract is hereinafter more particularly set out.

Referring to paragraph V, these defendants deny, all and singular, the allegations therein contained.

Referring to paragraph VI, these defendants deny, all and singular, the allegations therein contained.

Referring to paragraph VII, these defendants deny that in September, 1918, in violation of the covenants of the contract alleged by the plaintiff, or otherwise, the defendant John Tuppela engaged, employed, and retained other attorneys, and proceeded with the prosecution of his claims to the properties described in paragraph IV of the complaint. They admit that the decree alleged was made by the United States Circuit Court of Appeals for the Ninth District, but deny that the same was made as the result of any action taken by the defendant John Tuppela in the month of September, 1918.

Referring to paragraph VIII, these defendants admit that a settlement was had pursuant to said decree between John Tuppela and the Chichagoff Mining Co., but deny that said settlement was in terms as alleged by the plaintiff, but the correct terms of said settlement are as follows, to wit: That on or about the 6th day of July, 1920, said defendant John Tuppela procured a decree for an undivided one-half interest in the "Over the Hill" lode mining claim, an undivided one-half interest in the "Pacific" lode mining claim, and the whole of the "Rising Sun" lode mining claim, and also a decree for an accounting of the ores mined and milled from said claims by the said Chichagoff Mining Co.; that thereafter a settlement was had in the matter of accounting, and the defendant John Tuppela received as his share of the same after paying his part of the expenses of said suit the sum of \$114,250.00 and an undivided one-quarter interest in the "Over the Hill" and "Pacific" lode mining claims and an undivided [20] one-half interest in the "Rising Sun" lode mining claim.

Referring to paragraph X, these defendants deny that the plaintiff rendered any services to the defendant John Tuppela, and deny that any services claimed to have been rendered were of any value whatsoever to said defendant; they further deny that the contract of the 11th day of March, 1918, between the plaintiff and the defendant Tuppela, was a contract of great or any value to the plaintiff and they deny that the plaintiff has suffered great or any damages whatsoever by reason

of the breach of said contract on the part of the defendant John Tuppela, and deny that there was any such breach. They further deny that the plaintiff would have successfully prosecuted the said Tuppela's claims, or would have earned, received, and realized from said contract the sum of \$450,000.00, or any other sum whatsoever. They further deny that through the breach of said contract, or otherwise, the plaintiff has been deprived of the sum of \$450,000.00, or any other sum whatsoever.

Referring to the third further and separate cause of action in plaintiff's complaint contained, and referring to the first paragraph thereof, these defendants have no knowledge or information concerning the matters and things therein alleged, and they, therefore, deny the same.

Referring to paragraphs IV and V of said third cause of action in said complaint, these defendants have no knowledge or information concerning the matters therein alleged and they, therefore, deny the same.

And for a first and affirmative defense to the matters and things in the plaintiff's complaint alleged, these defendants allege:

Plaintiff ought not to have and maintain this suit against them, for that:

Plaintiff was not at the time of the execution of the contract referred to in the complaint, and is not now, and never has been, qualified and capable of performing on his part the duties and [21] professional service therein undertaken by him, in

this: That it became and was the duty of the plaintiff under said contract, and it was in the contemplation of the parties thereto, that the plaintiff should bring an action in the name of John Tuppela against the Chichagoff Mining Co., to recover the property in said contract mentioned, that such a suit could only be brought in the District Court for Alaska, and plaintiff was not at the time of the execution of said contract, is not now, and never has been, admitted to practice in the courts of Alaska, and could not, at said time, become so qualified.

And for a second affirmative defense to the matters and things in said contract alleged, these defendants allege:

That if it be true as claimed by plaintiff that the defendant John Tuppela did discharge the plaintiff as his attorney, that said discharge was justified; for that plaintiff, by his gross negligence had failed, neglected and refused to bring the suit contemplated in said contract of employment for more than one year after the date of said contract of employment; or to come to Alaska and investigate the titles and rights of the said Tuppela thereunder; or in fact, to take any steps whatsoever toward a compliance with said contract on his part.

And for a third affirmative answer to the three causes of action in said complaint contained, these defendants allege:

That the plaintiff ought not to have and maintain this action, for that: The contract mentioned in plaintiff's complaint was obtained by plaintiff by

fraud and imposition practiced by the plaintiff upon the defendant John Tuppela as follows, to wit:

That the said Tuppela became insane in the early part of the year 1914, and was sent to the Morning-side Asylum for treatment; that he was discharged from said asylum on December 17, 1917; that some time about March 1, 1918, he met the plaintiff at Astoria, Oregon; that the plaintiff held himself out as an attorney at law; that said [22] Tuppela is an ignorant miner and prospector, unable to read or write the English language, and, in addition, was at said time in bad health mentally and physically, and was in utterly destitute circumstances, that all the property he owned was the mining property mentioned in the complaint, and which was then in the possession of the Chichagoff Mining Co., and claimed by it through alleged conveyance of Tuppela's title; that Tuppela at said time was desirous of finding an attorney who could and would undertake to provide the moneys to meet the necessary expenses of *bring* and prosecuting to final judgment a suit in his behalf against the said Chichagoff Mining Co., to recover said claims, and who could and would also, with reasonable skill and diligence as his attorney, bring and prosecute such suit to final judgment in consideration of a moiety after fruits of such litigation, the said Tuppela having no other means whatsoever of procuring such moneys and legal services; that Tuppela fully acquainted the plaintiff with his condition, and all the facts concerning his rights to said property, and the plaintiff then and there agreed on his part

to bring such suit for Tuppela and prosecute the same to final judgment with reasonable skill and furnish all moneys necessary for the expenses of the suit and for the support of Tuppela during the litigation, in consideration of an undivided one-half interest in such property in the event plaintiff should succeed in recovering the same for the said Tuppela. That after said agreement and understanding between the plaintiff and the said Tuppela had been reached, plaintiff, as Tuppela's attorney, undertook to reduce the same to writing for execution on the part of both, but in so doing plaintiff intentionally and fraudulently omitted from such writing the obligations on his part to furnish said moneys and to bring and prosecute said suit with reasonable skill and diligence, but falsely represented to the said Tuppela that the contract as drawn by plaintiff correctly embodied their agreement as aforesaid, and the said Tuppela being unable to read said writing, [23] and relying upon the said representations of plaintiff, signed the same believing it to contain the stipulations and undertakings of the plaintiff aforesaid, and the said pretended contract, a copy of which is hereto attached, is the identical contract mentioned in the complaint.

And for a fourth affirmative defense to the three causes of action in said complaint, defendants allege:

That after the employment of plaintiff by the defendant Tuppela, on March 11th, 1918, as his, Tuppela's attorney, it became and was the duty of the plaintiff to bring and prosecute such suit with rea-

sonable skill and diligence; that plaintiff knew, or should have known, that delay in bringing said suit and promptly assisting the rights of Tuppela greatly endangered his client's interest in and right to the property involved, but that, notwithstanding, plaintiff wilfully or negligently failed to file said suit, or to take any steps whatsoever under his said employment; that said Tuppela waited upon plaintiff for more than a year, repeatedly requesting him to file said suit, but the plaintiff still failing to do anything but having wholly abandoned his said employment, the said Tuppela, on or about May 2d, 1919, employed other counsel to perform such services, upon substantially the same terms as he had formerly employed the plaintiff; that plaintiff knew of such employment and knew that such employment was had under the belief on the part of Tuppela that plaintiff had abandoned his connection with the case, and so knowing plaintiff made no objection thereto; did not aid nor offer to aid in any way in the prosecution of said suit, but acquiesced in the changes made in his situation and obligations by Tuppela, intending, however, to thereby escape all the burdens, risks and obligations of his said employment, but in the event of the final recovery of said property through the efforts, risks and expense of other counsel so employed by Tuppela, to assert a claim under the said contract of March 11th, 1918. [24] That if plaintiff had not in fact abandoned his said employment, it was his duty to and he could and would have aided and taken part in the prosecution of said suit, and shared

in the burdens and risks of the counsel therein, as well as the benefits resulting from the success finally achieved. That by his conduct aforesaid, plaintiff misled the said Tuppela and induced him to employ other counsel and pay them full value for professional services in said suit, and now seeks to recover the defendants' all and more than all the money and property obtained from said litigation. That by reason of the premises plaintiff is now estopped to claim said contract of March 11, 1918, was not abandoned, or that it has or had any binding force whatsoever.

And for a fifth affirmative defense to said complaint, defendants allege:

Plaintiff ought not to have and maintain this suit against them, for that:

If plaintiff did not wholly abandon said contract of employment alleged by him, prior to the time of the employment of other counsel by Tuppela, he was guilty of gross professional negligence, which justified the said Tuppela in discharging him, in this: Plaintiff knew, or by the use of ordinary skill and diligence should have known, that delay in the bringing of said suit and the prompt assertion of the claim of said Tuppela to said property, would greatly endanger the rights of the said Tuppela thereto by laying the foundation for a plea of laches by the said Chichagoff Mining Co. That it was the plaintiff's duty, upon accepting said employment, to bring and prosecute said suit with reasonable skill and diligence, and under the peculiar circumstances of said suit, it was his imperative duty so

to do; but the plaintiff wilfully or negligently failed to bring said suit, or to take any steps whatsoever therein; and after the expiration of more than a year from the date of employment of plaintiff [25] by Tuppela, the latter, in order to avoid the full consequences to himself of the plaintiff's neglect, employed other counsel, and put an end to his contract with the plaintiff.

And, for a further affirmative defense to the third cause of action set out in said complaint, defendants allege:

That if plaintiff did advance any moneys as therein alleged, he made such advances under his contract with Tuppela, which said moneys were only to be repaid upon the successful termination of a suit to be brought and prosecuted by the plaintiff. That plaintiff wholly failed and neglected to bring and prosecute such suit, and the moneys so advanced and expected by plaintiff, if any, were of no benefit whatever to said Tuppela, but were expended solely in a futile effort by plaintiff to earn a fee.

WHEREFORE, defendants pray that plaintiff take nothing by this action, and that they receive of plaintiff their *cases* and disbursements.

GROVER C. WINN and

J. H. COBB,

Attorneys for Defendants.

J. H. COBB,

Guardian *ad Litem* for John Tuppela.

United States of America,
Territory of Alaska,—ss.

John H. Cobb, being first duly sworn, deposes and says: I am one of the defendants above named. The above and foregoing complaint is true as I verily believe.

J. H. COBB.

Subscribed and sworn to before me this, the 16 day of June, 1922.

[Notary Seal]

J. W. KEHOE,

Notary Public in and for Alaska.

My commission expires Sept. 15, 1925. [26]

AGREEMENT.

This instrument made this 11th day of March, 1918, by and between John Tuppela of Astoria, Oregon, party of the first part, and Enoch E. Mathison, of Astoria, Oregon, party of the second part, WITNESSETH:

That whereas, the party of the first part claims to have interest in several of the mining claims situated at Chichagof in the Sitka precinct in the territory of Alaska, more particularly described and named as follows, to wit: "Over the Hill" lode mining claim, "Pacific" lode mining claim, "Golden West" lode mining claim, "Rising Sun" lode mining claim, and the "Porphyry" lode mining claim, all at Chichagof in the Sitka Precinct of the Territory of Alaska, aforesaid; and

Whereas, the party of the first part has other interests in other properties at or near Sitka, Alaska,

Whereas, title and interest of the party of the first part to the property or properties aforesaid, is in dispute, and

Whereas, the party of the second part is an attorney at law, duly licensed to practice, and

Whereas, the party of the first part has engaged, retained and employed the party of the second part to act for him and in his stead in all legal matters pertaining to the prosecution of the claims of the party of the first part, in and to the property described above, and to represent him in the courts of law and equity, and in all other courts in which it may become necessary for the proper prosecution of said claims, and for the complete settlement and adjustment arising out of said claims or actions instituted thereof.

Now, therefore, the party of the first part in consideration of the services to be rendered by the party of the second part, does hereby promise and agree that the party of the second part may receive and recover one half of the interests in said properties hereinbefore described, or one half of the net proceeds from the sale of same, or if any damages be recovered from any of the parties claiming interest in said properties, then and in that case the party of the first part agrees and promises to pay one half of the proceeds collected of said damages.

It is further understood and agreed by and between the parties hereto that the party of the second part may associate any other attorney or attorneys with him as associate counsel in all mat-

ters herein, and the party of the second part in consideration of the payments to be made as hereinbefore set forth, promises and agrees to represent the party of the first part in all matters pertaining to his right or rights in the properties aforesaid, and to prosecute any action or suit growing out of same and in all courts as in his judgment shall deem best and proper, for the successful consummation of said litigation or claims, and the party of the second part, as attorney for the party of the first part, is hereby authorized and directed to collect any moneys that may be recovered from said interests or action, and to account to the party of the first part in accordance with the terms of this agreement. [27]

In witness whereof, the parties hereto have hereunto set their hands and seals in duplicate, this 11th day of March, 1918.

JOHN TUPPELA,

Party of the First Part,

ENOCH E. MATHISON,

Party of the Second Part.

Signed and sealed in presence of

LAURI MOILANEN.

J. J. BARRETT.

State of Oregon,

County of Clatsop,—ss.

Be it remembered, that on the 11th day of March, 1918, before me, the undersigned, a notary public, in and said County and State, personally appeared the within named John Tuppela and Enoch E.

Mathison, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In Testimony Whereof, I hereunto set my hand and notarial seal, the day and year last above written.

[Seal]

J. J. BARRETT,
Notary Public for Oregon.

Filed in the District Court, District of Alaska,
First Division Jun. 17, 1922. John H. Dunn, Clerk,
By W. B. King, Deputy. [28]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

· ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB as Trustee for
JOHN TUPPELA and GROVER C. WINN,
as Guardian of the Person of JOHN TUPPELA,

Defendants.

Reply to Second Amended Answer.

Replying to defendant's second amended answer herein, plaintiff admits, denies and alleges:

I.

Replying to the paragraph commencing with the

words "Referring to paragraph VIII" found on pages 3 and 4 of said second amended answer, plaintiff denies that the defendant Tuppela received as his share, under the accounting of the settlement with the Chichagoff Mining Company, only \$114,250.00 and only an undivided one-quarter interest in the "Over the Hill" and "Pacific" lode mining claims and only an undivided one-half interest in the "Rising Sun" lode mining claims, and alleges that on the contrary said Tuppela received under said accounting the sum of \$300,000.00 and an undivided one-half interest in the "Over the Hill" and "Pacific" lode mining claims and the whole of the "Rising Sun" mining claims.

II.

And replying further to the "First and Affirmative Defense" contained in said second amended answer on page 5 thereof, plaintiff denies each and every allegation thereof, except plaintiff admits that it was within the contemplation of plaintiff and of said defendant Tuppela to prosecute to final determination by such action, legal or otherwise, as might be necessary the claims of said Tuppela against the Chichagoff Mining Company and that plaintiff has never been admitted to practice in the courts of the territory of Alaska, [29] but plaintiff alleges that said defendant Tuppela wrongfully prevented plaintiff from prosecuting said claims to final determination.

III.

And replying to the "Second Affirmative Defense" contained in said second amended answer on pages

5 and 6 thereof, plaintiff denies each and every allegation thereof.

IV.

And replying to the "third affirmative answer" contained in said second amended answer on pages 6 and 7 thereof, plaintiff denies each and every allegation thereof, save and except plaintiff admits that said Tuppela became insane in or about the year 1914 and was sent to the Morningside Asylum for treatment and that he was discharged therefrom on or about December 17, 1917; and that plaintiff is and has held himself out as an attorney at law for many years, and long prior to the year 1918, and that after said Tuppela's discharge from said asylum he was desirous of finding an attorney to bring a suit on his behalf to recover certain mining claims and other property from the Chichagoff Mining Company, and that, on or about March 11, 1918, plaintiff and said defendant Tuppela entered into a contract, a substantial copy of which is attached to said amended answer.

V.

And replying to the "fourth affirmative defense" contained in said second amended answer on pages 7, 8 and 9 thereof, plaintiff denies each and every allegations thereof.

VI.

And replying to the "fifth affirmative defense" contained in said second amended answer on pages 9 and 10 thereof, plaintiff denies each and every allegation thereof.

VII.

And replying to the “further affirmative defense” contained in said second amended answer on pages 10 thereof, plaintiff denies each and [30] every allegation thereof.

WHEREFORE plaintiff renews his prayer as in his complaint herein contained.

R. E. ROBERTSON,
Of Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

R. E. Robertson, being first duly sworn on oath, deposes and says; that he is one of counsel for plaintiff in the foregoing action; that he is a citizen of the United States, a resident of the territory of Alaska, and over the age of 21 years; that he has read the foregoing reply and knows the contents thereof, and that the same is true as he verily believes; that the reason he makes this verification is that the plaintiff is not now in or a resident of the District of Alaska, but is absent therefrom.

R. E. ROBERTSON.

Subscribed and sworn to before me this 21st day of July, 1922.

[Seal]

JOHN H. DUNN,
Clerk Dist. Court for Alaska.

Copy of the foregoing reply received this 22d day of July, 1922.

Of Counsel for Defendants.

Filed in the District Court, District of Alaska,
First Division. Jul. 22, 1922. J. H. Dunn, Clerk.
By —————, Deputy. [31]

In the District Court for the District of Alaska
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB, as Trustee for
JOHN TUPPELA and GROVER C. WINN, as
Guardian of the Person of JOHN TUPPELA.

Defendants.

Judgment.

This matter having heretofore, on November 8, 1922 come on regularly for trial in the above entitled court before a jury duly and regularly empanelled and sworn to try the issues thereof, and the parties having duly appeared by their respective attorneys, and thereupon the evidence of said parties having been duly adduced in open court before said jury, and each of said parties having rested, and thereupon, after argument of respective counsel, the jury, having been instructed by the Court, retired to the jury-room, and thereafter returned in open court and rendered their verdict herein, which said verdict was duly filed herein on November 13, 1922, and which said verdict is, in words and figures, as follows, to wit:

“In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELLA, J. H. COBB as Trustee for
JOHN TUPPELA and GROVER C. WINN,
as Guardian of the Person of JOHN
TUPPELA.

Verdict.

We, the Jury, duly and regularly empanelled and sworn to try the issues in the above-entitled cause, find for the [32] plaintiff, Enoch E. Mathison, on the second cause of action of the complaint and assess his damages in the sum of \$2500.00; and we, the jury, duly and regularly empanelled and sworn as aforesaid, find for the plaintiff, Enoch E. Mathison, on the third cause of action of the complaint in the sum of \$362.50, with interest at the rate of six per cent (6%) per annum from October 18, 1921.

B. H. BERTHOLL,

Foreman.

Filed in the District Court, District of Alaska,
First Division. Nov. 13, 1922. John H. Dunn,
Clerk.

Entered Court Journal No. 5, page 424.”

And thereupon the plaintiff, having filed his
motion for a judgment notwithstanding said ver-

dict, and a motion for a new trial, and the defendants having filed their motion for a new trial, and all of said motions having been denied, and the Court being now fully advised in the premises,

IT IS NOW, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff have judgment against the defendants and each of them for the sum of \$2,500.00, as damages, together with interest thereon at the rate of 8% per annum from date until paid; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the plaintiff have judgment against the defendants, and each of them, for the sum of \$362.50, together with interest thereon at the rate of 6% per annum from October 18, 1921, amounting to \$23.55, said principal and interest aggregating at this date \$386.05, together with interest on said \$386.05 at the rate of 8% per annum from date until paid; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that plaintiff have and recover from the defendants his costs herein to be taxed.

Done in open court this 18th day of November, 1922.

THOS. M. REED,
District Judge. [33]

All the parties, both plaintiff and defendant, having excepted to the foregoing judgment, an exception is hereby allowed to each of the parties to this action to the making and entry of this judgment.

Done in open court this 18th day of November, 1922.

THOS. M. REED,
District Judge.

O. K.—COBB.

Filed in the District Court, District of Alaska, First Division, Nov. 18, 1922. John H. Dunn, Clerk. By ————, Deputy.

Entered Court Journal No. R., pages 447 and 448.
[34]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHESON,

Plaintiff,

vs.

JOHN TUPPELA et al.,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the trial of the above-entitled and numbered cause, the following proceedings were had, to wit:

The jury having been selected, impaneled and sworn, the defendants moved the Court to require the plaintiff to elect, as between the first and second cause of action, upon which he would go to trial.

The COURT.—I'll hear from the other side.

Mr. ROBERTSON.—The plaintiff at this time, as between the first and second causes of action, elects to go to trial upon the second. [35]

**Testimony of Enoch E. Mathison, in His Own
Behalf.**

ENOCH E. MATHISON, the plaintiff herein, called as a witness on his own behalf, having been first duly sworn, to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Mr. Mathison, will you please state your name to the reporter?

A. Enoch E. Mathison—M-a-t-h-i-s-o-n.

Q. How old are you Mr. Mathison?

A. Forty-three.

Q. Of what country are you a citizen?

A. United States.

Q. How long have you been a citizen of the United States? A. Since 1887.

Q. In what country were you born?

A. Norway.

Q. Are you of Finnish descent or parentage?

A. Finnish and Norwegian.

Q. One of your parents was Finnish and one Norwegian, is that correct. A. Yes, sir.

Q. Where do you reside, Mr. Mathison?

A. Astoria, Oregon.

Q. How long have you resided in Astoria, Oregon?

(Testimony of Enoch E. Mathison.)

A. I have resided there the last time since March, 1916.

Q. What business are you engaged in at Astoria, Oregon? A. Attorney at law.

Q. How long have you been engaged in that business? A. I was admitted in July, 1915.

Q. How long—

Mr. COBB.—(Interrupting.) I think the certificate of admission is the best evidence. [36]

The COURT.—Yes.

Mr. ROBERTSON.—Yes, we'll produce that, if the Court please.

The COURT.—Well, he may answer the question and then produce the certificate.

Q. The question is, How long have you been practicing law? A. Since July, 1915.

Q. Now, are you a graduate of any law school?

A. The University of Oregon.

Mr. COBB.—Wait a minute. We object that.

Mr. ROBERTSON.—How would we ever prove it except by asking him, Mr. Cobb?

Mr. COBB.—You've got a certificate of it.

The COURT.—Well, he may answer that.

Q. You're a graduate of the University of Oregon Law School, is that it? A. Yes, sir.

Q. Now, Mr. Mathison, are you a member of the Supreme Court of Oregon?

A. Yes, sir.

Q. The bar of the Supreme Court of Oregon?

A. Yes, sir.

Q. You have a certificate from that court?

(Testimony of Enoch E. Mathison.)

A. I have, sir.

Q. Look at that and say whether or not that is the certificate? (Handing document to witness.)

A. (Examining document.) Yes, sir; this is the one.

Mr. COBB.—We object to that as irrelevant and immaterial. That doesn't qualify him to practice in this court.

Mr. ROBERTSON.—Of course, we take the position— [37]

The COURT.—(Interrupting.) Objection overruled, because of the peculiar wording of the contract, authorizing him to employ other attorneys or associate other counsel.

(Whereupon said certificate of admission was received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. COBB.—We'll note an exception.

Mr. ROBERTSON.—I will ask that the certificate be marked and also request that we be given permission to have the Clerk make a certified copy of it and return the original to Mr. Mathison.

Mr. COBB.—Well, so far as that is concerned, you may let the record show the substance, or you may offer a copy.

Mr. ROBERTSON.—We'd rather have a copy so as not to mark up the original.

Q. Now, Mr. Mathison, are you admitted to the bar of the federal court for the District of Washington?

A. Yes, sir; I am.

(Testimony of Enoch E. Mathison.)

Q. Do you recall, offhand, what date you were admitted to the bar of that court?

A. No, I don't—either 1915 or 1916.

Q. Before coming up here this time, did you obtain a certified copy of your certificate of admission to that bar? A. Yes, sir.

Q. I will ask you if that is the certificate (handing paper to witness)?

A. Yes, sir; this is the one.

Mr. COBB.—I think that it is wholly irrelevant and immaterial. Our statute is silent upon the District Courts of the United States in the States, and it is immaterial. He is authorized to practice in the District Court, federal or Oregon but—

Mr. ROBERTSON. — (Interrupting.) We're simply showing that— [38]

The COURT.—Objection overruled.

Mr. COBB.—We except.

Q. Now, from that certificate, will you refresh your memory from it, Mr. Mathison. Do you recall, now, that you were admitted on the twenty-second day of November, 1915, is that correct?

A. Yes, sir; that is the correct date.

Q. I offer that in evidence and also request the privilege—Do you care to have that particular copy, Mr. Mathison? A. Yes.

Mr. ROBERTSON.—I would like to have the clerk make a certified copy of that.

(Whereupon Clerk was instructed to have copy made.)

Q. Now, then, Mr. Mathison, will you state how

(Testimony of Enoch E. Mathison.)

long you have been engaged in the practice of law in Astoria, Oregon? A. Since March, 1916.

Q. And prior to that time where had you practiced? A. Portland.

Q. At Portland, Oregon?

A. Portland, Oregon; yes, sir.

Q. What, if any, occupation or business were you engaged in prior to your admission to the bar?

Mr. COBB.—We object to that as irrelevant and immaterial.

Mr. ROBERTSON.—If the Court please, I would just like to state before the Court rules on that—the purpose of that is that we feel that if we can show that Mr. Mathison was engaged in a business allied to the law business for a number of years before—it's like an apprenticeship or a scholarship, even though the actual admission is the final, ultimate thing that shows the man holds himself out to the public as a practitioner. [39]

The COURT.—I sustain the objection. Admission to the bar necessarily requires a certain amount of study and certain qualifications.

Mr. ROBERTSON.—Very well.

Q. Now Mr. Mathison, in 1917 and 1918, were you then practicing law in Astoria, Oregon?

A. I was.

Q. Whereabouts does your practice extend?

Mr. COBB.—We object to that as irrelevant and immaterial.

The COURT.—Objection overruled.

A. In the state courts of the State of Washing-

(Testimony of Enoch E. Mathison.)

ton and Oregon and also the District Courts of both of the states.

Q. The District Courts?

A. I mean the United States District Courts.

Q. How about your Supreme Courts?

A. The state Supreme Courts?

Q. Yes, sir.

A. Yes, sir; practice in both of the Supreme Courts.

Q. Of both the State of Washington—

A. Of both.

Q. (Continuing.) And Oregon?

A. Of both the States of Washington and Oregon.

Q. Now, what was the general nature of your practice? A. Well, it was general practice.

Q. General practice of law? A. Yes.

Q. Along in the fall of 1917, Mr. Mathison, did you have occasion at any time to come in contact with the defendant, John Tuppela, in this case?

A. Yes, sir; I did. [40]

Q. At that time where was John Tuppela?

A. I met him at a sanitarium at Portland.

Q. Met him at a sanitarium at Portland, Oregon. How did you happen to meet him there at that time?

Mr. COBB.—We think this is wholly irrelevant and immaterial. I don't care anything about it, except that it is irrelevant and immaterial. The contract is alleged to have been made on March 11th.

(Testimony of Enoch E. Mathison.)

The COURT.—Well, it may be material to some facts leading up to the contract.

Mr. COBB.—How is that?

The COURT.—It may be material as showing the facts and the associations of the parties leading up to the contract, the execution of the contract.

Mr. ROBERTSON.—It's simply preliminary—leading up to the contract. We can't start in with the contract.

The COURT.—Objection overruled.

Mr. COBB.—Very well.

A. I met him at the Jurvas Sanitarium, some time in the latter part of November, 1917.

Q. How did you happen to meet him there at that time?

A. I was requested to go and see him at that time.

Q. Well, at that time whereabouts, if any place, was he confined?

A. He was on parole at that time.

Q. On parole from what?

A. From the Morningside institution.

Q. Is that the institution to which the insane persons from Alaska are sent? A. Yes, sir.

Q. And at the time you met him he was on parole? [41]

A. On parole at what is known as the Jurvas Sanitarium.

Q. At that time did you have any talk with Mr. Tuppela? A. I did.

Q. What was the nature of that conversation?

(Testimony of Enoch E. Mathison.)

Mr. COBB.—We object to that on the ground that Mr. Tuppela is admitted in the pleadings to have been now insane and any conversations that occurred between them are inadmissible against him, the same as if he were dead.

The COURT.—I'll hear from you on that.

Mr. ROBERTSON.—Well, I don't know of any statute that prevents you from giving testimony, giving in evidence the admissions of a decedent against himself after death.

Mr. COBB.—Only conversations?

Mr. ROBERTSON.—Or conferences.

The COURT.—Yes.

Mr. ROBERTSON.—For instance, the fact that this man was or has since become insane, certainly doesn't shut out all the testimony or all the statements that he may have made in entering into the contract. Now, assuming, in this case, if the Court please, for instance, that this suit was instituted after Mr. Grover C. Winn was appointed guardian of his person; assuming that this suit had been instituted two days before the date when Mr. Cobb, in his statement, admits that the man was insane, then could the adjudication of insanity shut out Mr. Mathison's giving statements which might be most important in order to show his rights against the man who had been adjudicated insane? Now, then, if that is not true, why was it—

The COURT.—(Interrupting.) You don't get the point. This man was adjudicated insane and he had not been discharged from the asylum. [42]

(Testimony of Enoch E. Mathison.)

Mr. ROBERTSON.—Oh, at the time he met him?

The COURT.—At the time of this conversation.

Mr. ROBERTSON.—I beg your pardon.

The COURT.—Any statements made while the adjudication of insanity was still on, I think, would be incompetent.

Q. Well, now, Mr. Mathison, what, if anything, occurred to Mr. Tuppela about that time as to whether or not he was discharged or not discharged from Morningside Asylum?

A. He was not discharged from the Morningside Asylum, but he was on parole.

Q. Well, do you know when he was discharged from Morningside asylum, or approximately the time?

A. He was discharged in December; the latter part of December.

Q. What year? A. 1917.

Mr. COBB.—We might agree on that day.

Mr. ROBERTSON.—December 19th.

Mr. COBB.—December 19th.

Q. Now, then, after Mr. Tuppela was discharged from the asylum, did you have occasion to see him again? A. Yes, I saw him.

Q. Whereabouts? A. In my office.

Q. In what city? A. In Astoria, Oregon.

Q. About what time was that?

A. That was shortly after he came down.

Q. I mean what time of the year?

A. Probably between Christmas and New Year's, 1917.

(Testimony of Enoch E. Mathison.)

Q. Christmas of 1917 and New Year's of 1918, is that what you [43] mean? A. Yes.

Q. And do you recall at this time what the general subject of that conversation was? A. Yes.

Q. What was it?

A. The conversation at that time was about his rights in certain mining claims here in Alaska, and what efforts he had made to employ counsel to recover his rights or moneys, as he stated then.

Q. Well, what did he say he had done in reference to consulting counsel?

A. He stated that he had consulted two firms of attorneys in Portland prior to that and they had, both of them had turned his case down for the reason that they didn't believe that he had a cause of action and that if he did have, it was difficult to prove, and that it would be useless for them, or for him, to attempt to recover, and that he should recover, or take what was offered by the administrator.

Q. Did he tell you who those firms of attorneys were? A. Yes, sir.

Q. Who did he tell you they were?

A. A. E. Clark was one.

Mr. COBB.—I think I shall object to that. That's wholly irrelevant and immaterial.

The COURT.—I don't see the materiality. I'll hear from you.

Mr. ROBERTSON.—Of course, this is, as we view it, all preliminary—leading up to the actual execution of the written contract. But it also

(Testimony of Enoch E. Mathison.)

shows, in addition to that, particularly [44] this conversation, it shows what Mr. Mathison did in those preliminary negotiations, and also shows Tuppela's frame of mind relative to his alleged rights at the time that he first consulted Mr. Mathison, and we expect to show that at that time it was on Mr. Mathison's advice that he did not accept the amount offered by the administrator; and it seems to us that this is absolutely proper to go to the jury to show, not only that the negotiations were leading up to the actual execution of the contract, but were all leading up to an ultimate, successful consummation of any suit or litigation in Tuppela's favor.

The COURT.—Your contention is that Mr. Tuppela was advised by Mr. Mathison as to the legal aspect of this case at that time?

Mr. ROBERTSON.—In what year?

The COURT.—Yes.

Mr. ROBERTSON.—This was about New Year's, 1918.

The COURT.—And that the relation of attorney and client then existed between the parties?

Mr. ROBERTSON.—No, sir; no, sir; but these were the preliminary negotiations leading up to the making of the contract.

The COURT.—I'll sustain the objection.

Q. Now, then Mr. Mathison, at that time, did you have any other conversation with Mr. Tuppela?

Mr. COBB.—We object to it as irrelevant and immaterial—any conversation at that time. This was in 1917. Get down to the contract.

(Testimony of Enoch E. Mathison.)

Q. Relative to the entering into of any contract.

Mr. COBB.—We object to that as irrelevant and immaterial. There is no rule better established than that preliminary— [45] unless there is some question as to its construction—that preliminary negotiations are immaterial, because they're all merged into the written contract.

The COURT.—I think I shall sustain the objection.

Q. Now, Mr. Mathison, at this time did you do anything relative to ascertaining under what procedure Mr. Tuppela had originally been put in the asylum at Morningside?

Mr. COBB.—We object to that as irrelevant and immaterial. He is not suing for the value of his work. It makes no difference what he did. He is suing on this contract, for damages for its breach.

The COURT.—Under the contract itself?

Mr. COBB.—Under the contract itself.

The COURT.—Objection sustained.

Q. Very well. Now, then, during this period, from Christmas, 1917, Mr. Mathison, up to about March 11, 1918, did you and Mr. Tuppela have any conversation relative to entering into a contract, the making of a contract between you, covering the matter of the relationship of attorney and client, for the recovery of certain claims from the Chichagoff Mining Company?

Mr. COBB.—That's the same thing. We object to it as irrelevant and immaterial—conversation prior to the time the contract was made.

(Testimony of Enoch E. Mathison.)

Mr. MANNIX.—If the Court please, one of the defenses set up in this case is—

The COURT.—(Interrupting.) That's what I was thinking about.

Mr. MANNIX.—(Continuing.) Sets up the fact that this contract does not express the real intentions of the parties.

The COURT.—Yes. [46]

Mr. MANNIX.—And I think it would be very material under those circumstances.

The COURT.—That is just—

Mr. COBB.—(Interrupting.) Well, you have a deposition on file which is said to have been read to him in the Finnish language and explained.

The COURT.—Objection overruled.

A. I did have.

Q. Now, then, during the course of those conversations, what if anything, did you advise Mr. Tuppela with reference to your standing, in case it should be necessary to bring suit in the courts of Alaska—

Mr. COBB.—We object to that as irrelevant and immaterial. That doesn't apply to the contract. That is getting at something entirely different from what they said they wanted to introduce it for. Now, if they want to show that Mr. Tuppela understood that the contract was drawn and read to him, why the Court's ruling goes to that. Now, they are asking for a conversation as to what he said his standing was going to be. Of course, that isn't relevant or at all material.

(Testimony of Enoch E. Mathison.)

Mr. MANNIX.—If the Court please, I think Mr. Cobb has misconstrued the purpose of the question. It is not for the purpose of showing the execution of the contract necessarily, but it is for the purpose of meeting the objection specifically interposed to the effect that the contract as introduced in evidence is not the real contract between the parties. The purpose of this testimony is to show what the real understanding of the parties was—to give the jury a view of just what transpired between the parties, so that the jury ultimately can determine whether this contract [47] actually submitted, is the real agreement between the parties. That is the purpose of this question.

The COURT.—I think I'll overrule the objection for the purpose stated.

Mr. COBB.—I ask that the testimony be confined to that. Of course, if that is the purpose of it, I have no objection, but the question is not—

The COURT.—(Interrupting.) Yes, the form of the question makes it very doubtful what is meant.

(Question repeated by reporter.)

Mr. COBB.—Now, that question doesn't fall within the purview of the ruling of the Court. I object to that question. Let him ask directly, in compliance with the ruling of the Court that they may show that Mr. Tuppela understood the contract as finally made and that that was the contract between them.

Mr. ROBERTSON.—I withdraw the question to save any further argument.

(Testimony of Enoch E. Mathison.)

Mr. COBB.—Yes; I think that is better.

Q. Now, Mr. Mathison, did you and Mr. Tuppela, sometime the fore part of March, 1918, enter into any contract relative to the relationship of attorney and client between you and him concerning these claims he spoke to you about over near Chichagoff?

A. Yes, we did.

Q. Now, I will hand you a paper here that is marked in this case Plaintiff's Exhibit No. 1 for identification, having been attached to a deposition, and ask you to look at it and say whether or not that is the contract?

A. (Examining document.) Yes, sir; this is the contract. [48]

Q. Is that the original—one of the original copies of the contract? A. Yes, sir.

Q. I will offer that contract in evidence.

Mr. COBB.—No objection.

The COURT.—The contract that is pleaded on?

Mr. ROBERTSON.—Yes.

The COURT.—That the defendant pleaded on?

Mr. COBB.—A copy of it is attached to the answer—the same thing.

Mr. ROBERTSON.—And ask to have it marked.

Mr. COBB.—So that there can be no dispute about that.

(Whereupon said contract was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. ROBERTSON.—The contract is as follows (reads):

(Testimony of Enoch E. Mathison.)

Plaintiff's Exhibit No. 3.

“This instrument made this 11th day of March, 1918, by and between John Tuppela of Astoria, Oregon, party of the first part, and Enoch E. Mathison, of Astoria, Oregon, party of the second part, witnesseth:

“That whereas the party of the first part claims to have interest in several of the mining claims situated at Chichagof in the Sitka precinct in the Territory of Alaska, more particularly described and named as follows, to wit: Over the Hill lode mining claim, Pacific lode mining claim, Golden West lode mining claim, all at Chichagof in the Sitka Precinct of the Territory of Alaska, aforesaid; and

“Whereas, the party of the first part has other interests in other properties at or near Sitka, Alaska,

“Whereas, title and interest of the party of the first part to the property or properties aforesaid, is in dispute, and [49]

“Whereas, the party of the second part is an attorney at law, duly licensed to practice, and

“Whereas, the party of the first part has engaged, retained and employed the party of the second part to act for him and in his stead in all legal matters pertaining to the prosecution of the claims of the party of the first part, in and to the property described above, and to represent him in the courts of law and equity, and in all other courts in which it may become necessary for the proper prosecution

(Testimony of Enoch E. Mathison.)

of said claims, and for the complete settlement and adjustment arising out of said claims, or actions instituted thereof.

“Now, therefore, the party of the first part, in consideration of the services to be rendered by the party of the second part, does hereby promise and agree that the party of the second part may receive and recover one-half of the interests in said properties hereinbefore described, or one-half of the net proceeds from the sale of same, or if any damages be recovered from any of the parties claiming interest in said properties, then and in that case the party of the first part agrees and promises to pay one-half of the proceeds collected of said damages.

“It is further understood and agreed by and between the parties hereto that the party of the second part may associate any other attorney or attorneys with him as associate counsel in all matters herein, and the party of the second part, in consideration of the payments to be made as hereinbefore set forth, promises and agrees to represent the party of the first part in all matters pertaining to his right or rights in the properties aforesaid and to prosecute any action or suit growing out of same, and in all courts as in his judgment shall deem best and proper for the successful consummation of said litigation [50] or claims, and the party of the second part, as attorney for the party of the first part, is hereby authorized and directed to collect any moneys that may be recovered from

(Testimony of Enoch' E. Mathison.)

said interests or action, and to account to the party of the first part in accordance with the terms of this agreement.

“In witness whereof, the parties hereto have hereunto set their hands and seals in duplicate, this 11th day of March, 1918.

“JOHN TUPPELA,

“Party of the First Part.

“ENOCH E. MATHISON,

“Party of the Second Part.

“Signed and sealed in presence of

“LAURI MOILANEN.

“J. J. BARRETT.

“State of Oregon,

“County of Clatsop,—ss.

“Be it remembered, that on this 11th day of March, 1918, before me, the undersigned, a notary public in and said county and State, personally appeared the within named John Tuppela and Enoch E. Mathison, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

“In Testimony Whereof, I have hereunto set my hand and notarial seal, the day and year last above written.

[Seal]

“J. J. BARRETT,

“Notary Public for Oregon.”

(Testimony of Enoch E. Mathison.)

Q. Now, Mr. Mathison, referring to this contract, Plaintiff's [51] Exhibit No. 1 in this case, made on March 11, 1918, I will ask you how did it happen that you and Mr. Tuppela entered into that contract?

Mr. COBB.—I don't think that is material. They made the contract and the contract speaks for itself.

The COURT.—Well, I'll overrule the objection.

A. Having had a number of interviews with him relative to his claims, he was anxious that I should take the matter up and do what I could for him, and during these interviews I ascertained that his rights at that time were more or less indefinite and that it would require considerable preliminary investigation as to whether or not he had any rights in the—

Mr. COBB.—(Interrupting.) We object to that as not responsive to the question. It is immaterial and I ask that it be stricken out. He is asking him about a specific time.

Mr. ROBERTSON.—I asked him how they happened to enter into this contract.

The COURT.—Objection overruled.

A. Of course, I wired the administrator, Mr. Mills, for statements—

Mr. COBB.—We object to that as not the best evidence. Let him produce such writing.

The COURT.—Objection overruled.

Mr. ROBERTSON.—We didn't ask him to testify as to the contents.

(Testimony of Enoch E. Mathison.)

Mr. COBB.—He is testifying as to the substance of it.

The COURT.—Objection overruled.

Mr. COBB.—Except.

A. And through these wires and correspondence, I ascertained [52] that he did have some property here which was sold. I then wired up for certified copies of the probate proceedings as well as the proceedings relative to his commitment and received those certified copies.

Q. Now, Mr. Mathison, whose name did you use in wiring to Mr. Mills at Sitka?

A. I used Mr. August Nikola.

Q. And you have those original papers yourself?

A. No; I have not—just the certified copy of the proceedings is all I have.

Q. That is, you say you received a certified copy of the proceedings back from—

A. (Interposing.) From the Recorder at Sitka.

Q. I will ask you to look at these papers here, Mr. Mathison, and state whether or not they are the papers that you referred to that you got back as certified copies.

A. (After examining papers.) Yes, sir; these are the identical ones.

Mr. ROBERTSON.—I will offer them in evidence simply for the purpose, at this time, of corroborating these statements of the witness that he wired and got these papers.

Mr. COBB.—I don't see that they are at all

(Testimony of Enoch E. Mathison.)

material or why they should go into the evidence in this case. I don't see what fact they would tend to prove that is in issue.

Mr. ROBERTSON.—Well, I simply offer them as corroborative—

The COURT.—(Interrupting.) Do you object?

Mr. ROBERTSON.—If counsel objects to them, why—

Mr. COBB.—Oh, with the understanding that it may go in without the contents burdening up the record.

The COURT.—They may be received, then, simply for the purpose [53] of corroborating the testimony of the witness leading up to the entering into of the contract.

(Whereupon said papers were received in evidence and marked Plaintiff's Exhibit No. 4.)

Q. Now, then, Mr. Mathison, after this, as I understand it, you entered into this written contract with Mr. Tuppela, is that correct?

A. After I received these papers, I called him in and interviewed him as to whether these proceedings were connected with his property and claims and found out that they were, and also found out the claims, the name of the claims and the district that they were in and under what conditions they were sold. I then told him what was best to be done in the matter.

Q. Now, then, in what language did you and Mr. Tuppela ordinarily converse?

A. The Finnish language.

(Testimony of Enoch E. Mathison.)

Q. How did you happen to converse in Finnish?

A. Well, it was very material with him, because he could much more easily speak himself clearly in the Finnish language than he could in the English language.

Q. Do you speak the Finnish language fluently yourself? A. Fairly fluently; yes.

Q. Do you also write it?

A. Yes, I can write it.

Q. Now, at the time that this contract was entered into, just explain the circumstances at that time; that is, the details of it—whether or not it was or was not explained to Mr. Tuppela, and if so, how?

A. Well, Tuppela wanted me, he first wanted me to write to the Chichagoff Mining Company—

Q. (Interrupting.) No; I mean this contract of March 11, 1918. [54]

A. Well, that is what I am referring to. Prior to that he asked me to write to the company and ask them to send—to buy his interest out—

Mr. COBB.—(Interrupting.) I object to that. It is not responsive to the question, irrelevant and immaterial.

The COURT.—It may be excluded.

Mr. ROBERTSON.—I mean, now—

The COURT.—(Interrupting.) The circumstances of entering into the contract—what was done and what was said at the time.

Q. At the time?

A. At the time of entering into the—the execution of the contract?

(Testimony of Enoch E. Mathison.)

Q. Yes.

A. Well, at the time of the execution of the contract, the contract was read to him.

Q. In what language was it read to him?

A. The Finnish language as well as the English language.

Q. Pardon me?

A. The Finnish as well as the English language.

Q. Who acted as interpreter?

A. Mr. Lauri Moilanen.

Q. Mr. Lauri Moilanen?

A. Yes; he used to be interpreter in the courts.

Q. Who was he?

A. He was a reporter for one of the Finnish dailies over there, a newspaper.

Q. Where is Mr. Moilanen now?

A. I believe he is at Fitchburg, Massachusetts.

Q. At Fitchburg, Massachusetts. Now, what, if anything, did [55] you do relative to explaining it to Mr. Tuppela?

A. Of course, the contract was read to him and explained, so that he was informed and had knowledge as to the contents of the contract, and that embodied all the agreements that we had entered into before—preliminary to the execution.

Q. What, if anything, did you at that time or had you prior to that time, told Mr. Tuppela with reference to your being admitted to practice in the courts of Alaska?

Mr. COBB.—We object to that as irrelevant and immaterial.

(Testimony of Enoch, E. Mathison.)

The COURT.—Objection overruled.

A. I informed him that it might be necessary to bring suit in Alaska; though that might not really be necessary. It would depend on the circumstances. It might be brought in Washington and very likely wasn't any need to sue at all, but that in case it were necessary to bring suit in Alaska or in another State, I might want to get associate counsel.

Q. Well, what, if anything, did you put in the contract to cover that point?

Mr. COBB.—The contract speaks for itself.

Q. All right. I will ask you, then, Mr. Mathison, to look at the contract and examine it and state the clause that you claim, in the contract, covers that point?

Mr. COBB.—Well, that is going to be an opinion of the witness in the first place, whether it does or not. In the next place, it would be testifying to the contents of a paper that is already in evidence.

The COURT.—Yes; I think so. I think the objection is sustainable. The contract speaks for itself in that respect.

Q. I will ask you whether or not in drawing the contract you prepared it so as to cover that point.

Mr. COBB.—Now, the contract speaks for itself. That point [56] is not one that the contract is attacked upon at all.

Mr. ROBERTSON.—Why, you certainly do attack us on that point. I thought you did, anyway.

Mr. COBB.—No.

(Testimony of Enoch E. Mathison.)

The COURT.—They attack on the point that he was not qualified to practice law in the District of Alaska.

Mr. COBB.—Upon that point and that he didn't obligate himself in the contract to do what it was necessary for him to do and what he did agree to do. In fact, he didn't bind himself to anything he could help. That is the objection we are making.

The COURT.—Now, those remarks may be stricken out. The objection will be overruled if the question is modified.

(Question repeated by the reporter.)

The COURT.—That is a conclusion. You prepared it with intent to cover.

Q. I will ask you that question then.

The COURT.—Or for the purpose of covering it.

Q. I will ask you whether or not, in drawing this contract of March 11, 1918, Plaintiff's Exhibit No. 1 in this case, you drew it with the intent to show therein the fact that you could associate other counsel with you in case that you brought suit in the courts of Alaska or in other courts, or the courts of other States to which you had not been admitted to practice?

A. Yes, sir; that was embodied in the contract.

Q. That is, it was your intent to embody it in the contract?

A. That was my intent and his intent that it should be there.

Mr. COBB.—I ask that "his intent" be stricken out. He can't testify to somebody else's intent.

(Testimony of Enoch E. Mathison.)

Mr. ROBERTSON.—Very well. [57]

The COURT.—Yes; it may be stricken out.

Mr. ROBERTSON.—We agree that that part may be stricken out.

Q. Now, Mr. Mathison, at that time, what, if anything, did Mr. Tuppela say or do whereby he expressed, in any measure or in any way, his disagreement to the contract?

A. He didn't express any disagreement. The fact of it was—

Q. (Interrupting.) What, if anything, did he say or do to indicate to you at that time that the contract, as drawn, was agreeable to him?

A. Why, he stated that he would sign that contract and he was satisfied with it.

Q. No, did he sign the contract at that time?

A. He did sign the contract at that time.

Q. What, if anything, was concealed from him when he signed the contract?

A. Nothing whatever.

Q. At that time was the contract, or was it not, fully explained to him?

A. It was fully explained not only by myself, but Mr. Moilanen went over it word for word with him.

Q. What was Mr. Tuppela's mental condition at that time, in your opinion, from what you observed of him, as to being in a condition of mind to be able to understand it?

A. He fully understood the agreement and the contract and knew what he was doing. There is no question about that at all.

(Testimony of Enoch E. Mathison.)

Q. Now, I will ask you, Mr. Mathison whether or not, Mr. Tuppela, at any time prior to the time that the answer in this case was filed, ever, in any wise stated or told you, in any form, that the agreement did not express his understanding?

A. He never did say that in any way, at any time.
[58]

Q. Now, after the signing of the contract on March 11, 1918, what, if anything, did you do under the contract?

A. I immediately began to investigate the facts and the law applying to those and to ascertain as to what procedure I should take in recovery, recovering his claims, and in that connection I went over the probate proceedings and went to Portland to look over the statutes that we didn't have down at Astoria, and then from time to time consulted with Mr. Tuppela regarding the claims and his rights and the facts connected with them, from away back in 1905 or 1906, I think it was that he claimed it, and up to the time of his commitment to the insane asylum.

Q. Now, did you hold any consultations with him during that time?

A. Yes, sir; it was necessary to hold consultations with him very many times.

Q. How many times, after March 11, do you suppose, to the best of your recollection, that you held consultations with him concerning this matter?

A. Two or three times a week at first and then it was about once a week or so later on.

(Testimony of Enoch E. Mathison.)

Q. Well, how many times, to the best of your judgment, was it that you held consultations altogether with Mr. Tuppela after March 11, 1918?

A. Oh, I suppose between thirty and fifty times.

Q. Between how many?

A. Between thirty and fifty, from an hour to two hours at a time.

Q. Why, if at all, were such consultations necessary?

A. He didn't have any clear knowledge of the facts leading up [59] to it, to show that he had title to those properties, and it was necessary for me, after studying the papers, to consult with him, from time to time and find out what evidence he would have, to prove his claim.

Q. What, if any, conclusion did you reach in the matter, after your investigation?

A. I came to the conclusion that the sale of the property was void.

Q. The sale of the property by whom?

A. By the administrator.

Q. By whom?

A. Of the estate of Tuppela. By Mr. Mills.

Q. By Mr. Mills, as guardian of Mr. Tuppela?

A. Guardian of Mr. Tuppela. The sale was void.

Q. Yes, sir.

A. And that it could be set aside.

Q. Yes, sir.

A. I came to that conclusion and told him so, and told him also that it remained, then, to show that he really had title to the property; that if he

(Testimony of Enoch E. Mathison.)

could show proof that he had title to the property, his title remained yet in the property—the fact that it was sold by the administrator didn't amount to anything, since the proceedings of the sale were void.

Q. What was the next step that you took?

A. The next step was, after I came to the conclusion that such was the case, was to ascertain the facts as to how he could prove title to the particular properties, and it remained then to find out from the people with whom he had associated with and from the records at Sitka showing the different instruments that he had recorded there in connection with the development and improvement of the properties that he [60] claimed belonged to him.

Q. Did you make any investigation of the legal authorities or anything of that kind?

A. Oh, yes.

Mr. COBB.—We object to that as irrelevant and immaterial. He is not suing for the value of his work.

Mr. ROBERTSON.—Well, of course, if counsel maintains that it is immaterial that we prove any of the contents by performance, we're perfectly willing to let it go at that.

The COURT.—Objection overruled.

Q. Now, you can answer the question, Mr. Mathison.

A. It was necessary for me to look over legal authorities to find out just what, how I could establish the rights—

(Testimony of Enoch E. Mathison.)

Q. In other words as to what theory—

A. (Interrupting.) Yes; in case it was necessary to present it to a court of law. He himself—

Q. (Interrupting.) What other idea did you have besides recovering an equity?

A. He himself—

Q. (Interrupting.) No; you.

A. Well, one of my theories was the same as his, and that was, after having established all the facts in the case, to see the Chichagoff Mining Company and ask them to buy him out—buy him out, buy the property from him direct without any legal proceedings.

Q. What, if anything, warranted you in having such an opinion as that?

Mr. COBB.—We object to that as wholly immaterial and irrelevant.

Mr. ROBERTSON.—All right. [61]

The COURT.—Yes, I can't see the relevancy of it.

Q. Now, Mr. Mathison, what became of Mr. Tupela after March 11, 1918?

A. He was there in Astoria during that time until he left for Alaska.

Q. Was he in Astoria all the time?

A. He was out on a farm about four miles from there for a while—about a month or so.

Q. Whose farm was that?

A. That was my brother-in-law's farm.

Q. How did he hapepn to go out there?

A. I advised him to go over there and stay on

(Testimony of Enoch E. Mathison.)

the farm and drink lots of milk. He complained about his—

Mr. COBB.—I shall object to his going into that. I don't mind his going into it incidentally, but if they are going ahead and tell us how he lived out there and how much milk he drank—what has that got to do with the issues in this case? Wholly irrelevant and immaterial, if the Court please. I object to it.

Mr. MANNIX.—It might have a bearing on this one proposition, which is this; that the defendant in this case claims abandonment, or at least abandonment on the part of Mr. Mathison in carrying out the conditions of the contract, or, on the other hand, that he may have been discharged. The question of time said abandonment or discharge took place is not definitely set, and this should be material for the purpose of showing that for a period of three weeks after the execution of the contract, the parties were in close relationship; that they were doing business together and that there was no discord between them following this, [62] where he was later, and for the purpose of showing that up to the time that he left Astoria there were friendly relations between the parties, which would indicate that the plaintiff in this case was at the time working under the terms of the contract, and up until the defendant left Astoria.

Mr. COBB.—There was nothing for him to do down there. If he had investigated this thing, then the only thing to do was to bring suit. Now,

(Testimony of Enoch E. Mathison.)

what bearing it has upon that—he can testify, if he wants to. I shouldn't object to that.

The COURT.—I think that it has some bearing—

Mr. COBB.—How's that?

The COURT.—I think it has some bearing that may be material on the question of time, when it was he came north. That is the only thing.

Q. Just state, Mr. Mathison, how did it happen that immediately after making this contract of March 11, 1918, neither you nor Mr. Tuppela came north, to Alaska?

A. The reason was this: Doctor Coe, the doctor at the sanitarium, Morningside Sanitarium, advised us that it would be his advice not to send Tuppela up to Alaska at once, or for a while; that his physical condition wouldn't stand it, and that it would be best to keep him here in a mild climate for some time; that his condition wasn't such that he would be justified in going to Alaska. For that reason I advised him to stay there in Astoria until he had substantially recovered.

Q. Now, at that time did you have any plan in mind of either you or Mr. Tuppela coming to Alaska? [63] A. Yes, sir.

Q. For what purpose?

A. For the purpose of investigating, making a preliminary investigation as to those particular rights which I have stated, that he had in the claims.

Q. Why did you think of making an investigation in Alaska? A. Sir?

(Testimony of Enoch E. Mathison.)

Q. What—How did it happen that you wanted to make an investigation in Alaska?

A. All the facts leading to the—facts or evidence—leading to the ownership of those claims were here, as I understood it and the men that were his former partners were here, he thought, although he wasn't sure.

Q. What men were they?

A. Mr. Peterson was one of his partners and W. R. Hanlon.

Q. You remember any others that he mentioned?

A. Bauer.

Q. What?

A. A man by the name of Bauer. I can't recall his initials.

Q. Bauer, Peterson and Hanlon?

A. Those were his partners.

Q. Did Mr. Tuppela tell you about them at that time? A. Yes, sir.

Q. State for what, if any other purpose besides investigating you wanted to come to Alaska for?

A. He claimed that he had a cabin at Sitka and that he had all his personal effects and papers in that cabin.

Q. What did he want to do with his personal effects and papers?

A. The papers, he claimed, showed what improvements he had made on the different claims and would go to prove title to them. [64]

Q. For what, if any reason did you want to know about these witnesses, these three men that you have mentioned, before you instituted suit?

(Testimony of Enoch E. Mathison.)

A. That was absolutely necessary in order to draw a complaint, if it developed that a suit was necessary.

Q. You mean to say that you thought it possible that a suit might not be necessary?

A. Oh, yes; I have settled lots of claims without suits.

Q. Why did you want to know these things if you felt a suit would be necessary before you went into it further? A. What was that?

Q. Why did you want to find out about these witnesses and papers in any event, whether or not you brought suit or took some other course?

A. Well, I wanted to know the facts as to his title to the properties, and then after I had the facts I wanted to see the witnesses themselves, and the records in the recorder's office, and then I could form an idea of just what procedure I should take, and if the claims were such that they were undisputed and no one could deny that, as it appeared to me at that time, it would be proper for me to go to the Chichagoff Mining Company and present them with the facts and say, "These are the facts. Are you going to settle with me?" And I believe that they would have settled. That is my opinion. If they would not settle, then the last course would have been to the court. That is my practice. I don't know—some attorneys might not practice that way.

Q. Why didn't you come up yourself in the spring of 1918?

A. I had prepared to come in July—

(Testimony of Enoch E. Mathison.)

Q. Why didn't you come prior to July? [65]

A. (Continuing.) —1918, and had made reservations, but at that time—it was during war time—I was on the legal advisory board of the local draft board there and I had two cases in the Supreme Court in the State of Washington, and one in the State of Oregon. Then, of course, I was alone in the office and had my hands full all the time, and I had found out from the steamship companies, by writing, and figuring it out, that it would take about two months to make the trip to Juneau, Sitka and Chichagof Island, because of the different steamboat connections.

Q. What, if anything, did you do at that time about making reservations?

A. I made reservations to come here, but on finding out that it would take that long a time—and, of course, it was necessary that I should spend probably four or five days here, maybe a week at another place, in order to get the witnesses, find out where the witnesses were and interview them as to their knowledge of things, I saw that my business was such that it was impossible for me to come at that time.

Q. Did Tuppela come at that time?

A. Well, Tuppela was desirous of coming and he was in a pretty good healthy condition—

Q. (Interrupting.) Well, didn't he make a start to come?

A. (Continuing.) I made the reservation; the transportation was made by the Government. Doctor Coe arranged for that.

(Testimony of Enoch E. Mathison.)

Q. Did Tuppela make a start to come up?

A. And he left Astoria on the sixth of July, to go to Portland and get his ticket there on the seventh—the following day—and then go from there to Seattle. I gave him some money. I think it was— [66]

Q. Do you recall how much?

A. Yes. Sixty dollars at that time. He was gone, I guess about a week or so and he came back.

Q. Had he been to Alaska? A. No.

Q. Where had he been?

A. He said he went to Portland and didn't want to go to Alaska yet.

Q. Didn't want to go to Alaska yet?

A. No; he told me that—

Q. (Interrupting.) What did he tell you at that time?

A. He told me that he had a friend who was going up there after the fishing season and that he would—

Mr. COBB.—We object to that as irrelevant and immaterial. Can't see what it possibly—

Mr. ROBERTSON.—(Interrupting.) Counsel claims he didn't come up to Alaska, so we're trying to show why he didn't come to Alaska.

Mr. COBB.—Why should Tuppela come to Alaska when counsel failed to come with him, as it was arranged? He couldn't do anything up here by himself. Ask him why he didn't come.

The WITNESS.—He said he didn't—

Mr. COBB.—(Interrupting.) There's no complaint about Tuppela not coming up in July.

(Testimony of Enoch E. Mathison.)

The COURT.—Objection sustained.

Mr. MANNIX.—If the Court will pardon me for making a statement respecting this question. I take it that in every contract, it is implied by law that the client shall furnish the attorney with all the data necessary to proceed with the case. I take it that that is elementary law, that, whether [67] it is stated in the contract or not, the law implies agreement on the part of the client to furnish the necessary data. The evidence shows in this case, so far, that there was data in the way of papers, and documents here in Alaska which it was necessary for the attorney to have before he could proceed with the case. For that reason, I think it would be material to show, at this time, that the client, upon whom that duty rested, didn't fulfil his duty to this extent; that any neglect on the part of the client should not be charged to the plaintiff in this case.

The COURT.—The reason he didn't come up; what he stated as his reason; the fact that he didn't come up is shown, and that's all that is necessary.

Q. Now, then, Mr. Mathison.

A. I might, in this connection, state, in answer to that previous question, that before he left Astoria, I instructed him, and it was agreed that he should come here to Alaska and locate these witnesses, get their names and addresses and have personal interviews.

Q. That is, before he left?

A. Yes. And those papers that he had in his cabin in Sitka, to send them over to me.

(Testimony of Enoch E. Mathison.)

Q. Was that in July or August?

A. That was in July.

Q. Before he started over to Portland?

A. Yes.

Q. To come to Alaska?

A. It was in August when he finally left there.

Mr. ROBERTSON.—We had, in connection with that testimony of Mr. Mathison's that he gave a few moments ago, relative to a telegram sent in the name of August Nikula, the original [68] exhibits, which seem to have been unfortunately mislaid since we looked at them this morning. We can't find them and the Clerk can't find them. Now, there is a certified copy in the printed record and I would like to call the witness' attention to this in the record and ask him whether or not he can testify—

The COURT.—(Interrupting.) What exhibits are they?

Mr. ROBERTSON.—They are exhibits under which he got these—shows how he got these certified copies of the guardianship and insane proceedings, sale proceedings at Sitka.

Mr. COBB.—Well, now, we shall object to that?

Mr. ROBERTSON.—Do you object on the ground that it is not the best evidence?

Mr. COBB.—Not the best evidence and the situation is this: In the trial of the case of Tuppela against the Chichagoff Mining Company, the record shows that they introduced, the Chichagoff Company did, a telegram that they said was sent to August Nikula. Now, without producing the

(Testimony of Enoch E. Mathison.)

original—Further, he claims that those were his telegrams and he was using a forged name.

Mr. ROBERTSON.—He explained why he used it.

Mr. COBB.—How is that?

Mr. ROBERTSON.—He explained why he used it.

Mr. COBB.—I know, but it isn't his name. Now they want to take that record and have him identify it. If he sent these telegrams, he ought to have the originals.

The COURT.—Ought to have the originals—?

Mr. COBB.—Ought to have the original replies at any event.

The WITNESS.—If your Honor please, may I explain?

The COURT.—What is the materiality of this?
[69]

Mr. ROBERTSON.—Well, of course, it simply corroborates his statement that he did it—

The COURT.—Objection sustained.

Mr. ROBERTSON.—For the purpose of the record, we wish to make an offer.

The COURT.—You may make your offer.

Mr. ROBERTSON.—We want to make this offer—well, we withdraw the offer, if the Court please.

Q. Now, Mr. Mathison, when did Mr. Tuppela come to Alaska?

A. He left Astoria a few days after the fishing season. That was about the twenty-eighth or ninth of August.

(Testimony of Enoch E. Mathison.)

Q. What year? A. 1918.

Q. Did you provide him with any funds at that time in order to—

A. I gave him a few dollars. I don't recall. I think it was twenty-five dollars.

Q. Did he have means with which to come here?

A. Yes.

Q. Did he have transportation?

A. He had something like \$300; he said—

Q. Something like \$300?

A. Yes; due him from the Alaska miner who was then fishing in Astoria.

Q. Well, did he have funds to come to Alaska?

A. Yes, sir.

Q. Now, prior to his coming to Alaska, what, if any, advice did you give him relative to this particular matter that you have in the contract?

A. I advised him to locate these three witnesses and any other witnesses that he thought would substantiate his claim and [70] get their names and addresses and send them to me as well as to send those papers that he said he had in Sitka, and also that he should not enter into any negotiations with the Chichagoff Mining people or with Mills until he had consulted with me, and to sign no papers, as I believed they would naturally want to get in touch with him and want him to assign his rights in the property for a nominal sum.

Q. What, if anything, was he to do if he located the witnesses?

A. He was to send me their addresses and send me the papers, and when I had received those

(Testimony of Enoch E. Mathison.)

papers as well as the addresses of the men, then I was to take steps to get in touch with them. The purpose of that was to find out whether they were in Juneau or Seattle or Sitka or some other place, so that it wouldn't necessitate my going back and forth to Sitka and back to the States and then back again. If he could get their addresses I could go and consult with them, find out what they would testify to.

Q. What, if anything—how were your relations—you and Tuppela—at the time he left for Alaska; I mean with reference to being friendly or unfriendly? A. They were friendly.

Q. Well, at that time was he or was he not still coming to consult you about this case?

A. He saw me every week.

Q. Now, how were you—were you willing or unwilling to proceed with your contract with Tuppela?

A. I was willing; more than willing. I wanted to because I could see that he had lost a right in a very valuable property. I had had some experience in the same line of cases some years before. [71]

Q. And you were anxious to participate in it, if for no other reason? A. I was.

Q. Now, after he left Astoria, Mr. Mathison, when did you next hear from Mr. Tuppela?

A. From Tuppela?

Q. Yes, sir.

A. Never heard from him directly or indirectly, excepting I heard from parties then that he had come to Sitka. The first time I heard was in De-

(Testimony of Enoch E. Mathison.)

ember, that he was in a hospital with the flu.

Q. When did you think that you ought to first commence to hear from him again?

A. Why I hoped to hear from him by November; at least by November, 1918.

Q. Well, now, at that time that he came up in the fall, why didn't you come with him?

A. In the fall?

Q. Of 1918.

A. I couldn't come for the same reason—that I had two Supreme Court cases then in the courts which were pending and I was busy with those. Besides there were other things, and I believed first that it was necessary to get these facts first before I could intelligently proceed with it, and he could easily furnish these facts for me and he was willing to do it and he was able to do it, and that was the cheapest way for him and the cheapest for myself and a surer way.

Q. How about your readiness, too, to go ahead with it? A. How is that sir? [72]

Q. How about your readiness, were you ready to go ahead with it?

A. Oh, yes; as soon as I got these facts I was ready to go ahead with it.

Q. By this time had you established, in your own mind, the proper remedy for him?

A. Yes, I had. I had established in my own mind, if the facts were as stated and as I believed them to be.

Q. Now, when you didn't hear from him after he had come to Alaska, what, if anything, did you do?

(Testimony of Enoch E. Mathison.)

A. I saw— After I came back to the office in the latter part of November—

Q. (Interrupting.) Where had you been, when you say you came back to the office?

A. I was sick with the flu for a month, pretty near a month.

Q. In the fall of 1918? A. In the fall of 1918.

Q. Yes, sir.

A. And when I came back to the office, I saw Mr. Nikula and I asked him whether—

Q. (Interrupting.) Well, just state generally.

A. Since I didn't hear from Mr. Tuppela, I asked him whether he had heard from him, because he was also a friend of Mr. Tuppela and one of the parties who aided in getting him from the Morningside Sanitarium, and he said that he had heard that Tuppela—

Mr. COBB.—I object to that as hearsay.

Mr. ROBERTSON.—Yes, don't— Well, anyhow, what did you do?

A. I wrote. After finding no letters from him in the office, I wrote to Sitka. [73]

Q. Whom did you write to?

A. To John Tuppela.

Q. In what language did you write the letter?

A. Finnish language.

Q. Did you keep any copy of it?

A. No; I wrote it in pen.

Q. You mean, you wrote it in longhand?

A. Yes.

Q. What is your custom when you write in the Finnish language? A. Write with a pen usually.

(Testimony of Enoch E. Mathison.)

Q. Why did you write this letter in Finn, the Finnish language?

A. That was the easiest language for him to understand and read.

Q. And you didn't keep any copy of it?

A. No; I didn't.

Q. Did the letter ever come back to you?

A. No, sir.

Q. Did it have any postage on it?

A. Oh, yes; yes.

Q. Did it have sufficient postage to take it to Sitka? A. Yes, sir.

Q. Do you remember what you stated in that letter? A. I asked him—

Mr. COBB.—I object to that answer.

Q. Answer yes or no. A. Yes.

Q. Just state what you wrote to Mr. Tuppela at that time?

Mr. COBB.—I object to that on the ground that it is not the best evidence and we have no opportunity to produce that letter. Counsel served us this morning, about half-past [74] nine o'clock with a notice to produce that letter. They knew that for more than a year Mr. Tuppela had been insane and was confined in a hospital. It was the merest chance that we had it here, and that is not the proper way to get at it. They should have given us such notice as under the circumstances would have enabled us to produce it, if any such letter was ever written.

Mr. ROBERTSON.—We're not trying to hasten the counsel, but we asked counsel for half a dozen

(Testimony of Enoch E. Mathison.)

documents which are in his possession as trustee or Mr. Winn's as guardian—

Mr. COBB.—(Interrupting.) We wouldn't, either as trustee or as guardian, be likely to have, or be legally entitled to the possession of a private letter written in 1918. All the documents that I have as trustee I have produced here. Mr. Winn, of course, has nothing of that kind.

Mr. ROBERTSON.—We'll ask that counsel produce it in the morning, then.

Mr. COBB.—How is that?

Mr. ROBERTSON.—We ask that you produce it in the morning then,

Mr. COBB.—I haven't got it. John Tuppela has got it, if there ever was such a document.

Mr. ROBERTSON.—I thought you were arguing that on account of the shortness of time that you—

The COURT.—(Interrupting.) The argument of counsel is that he should have been entitled to three or four months' notice so that he could go to Tuppela and ask him if he had the letter.

Mr. COBB.—They knew that Mr. Tuppela was in an asylum at Minneapolis. [75]

The COURT.—Objection overruled.

Mr. COBB.—We except.

(Question repeated by the reporter.)

A. Substantially the contents was as to whether he had found these men and whether he had found the papers and to write me; then I asked him whether or not he had been sick in the hospital, as I had

(Testimony of Enoch E. Mathison.)

heard that he had been. That was substantially the contents of it.

Q. Did you get any reply to that letter.

A. I did not.

Adjourned until Thursday, November 9, 1922, at 10 o'clock A. M.

Thursday, November 9, 1922.

Court met pursuant to adjournment at 10 A. M.

ENOCH E. MATHISON on stand.

Direct Examination (Resumed).

(By Mr. ROBERTSON.)

Mr. ROBERTSON.—Before proceeding with the examination this morning, I would like to ask at this time if counsel has the reports and accountings made to Mr. Tuppela, or to Mr. Cobb as Mr. Tuppela's trustee, or to Mr. Winn, as his guardian, showing the credits from the properties conveyed to Mr. Tuppela by the Chichagoff Mining Company.

Mr. COBB.—I stated to counsel yesterday, and I thought it was understood. I could give you the results, if that will suit you. I suppose you want to know the amount that has been paid since the settlement?

Mr. ROBERTSON.—Yes, sir.

Mr. COBB.—I can give you the amount of that.
[76]

The COURT.—You want the details of it?

Mr. ROBERTSON.—Of course, I would like to know from what interest it appears that these figures Mr. Cobb gives me come from—as to what

(Testimony of Enoch E. Mathison.)

proportion there is in issue in this case; as to whether a quarter or a half interest was conveyed in the Over-the-Hill claim to Mr. Tuppela, or a quarter interest, and, of course, I would like to know and have it specified as to what these amounts, these credits, what interests they represent—whether they represent a quarter or a half interest.

Mr. COBB.—The figures I can give you. I can give you the exact figures, to the cent. The figures represent the aggregate amount that has been paid the present owners of an undivided half interest in the Over-the-Hill claim. That is about the only producing claim.

Mr. ROBERTSON.—Yes, sir.

Mr. COBB.—And show the expenses that have been paid, that we have been put to. We have leased the ground to the Chichagoff Mining Company, as you know, and the amount which I have received as trustee for Tuppela and the amount which—

Mr. ROBERTSON. — (Interrupting.) When could you have those here?

Mr. COBB.—I can get them at noon.

Mr. ROBERTSON.—I would also like to know whether or not you found the paper denominated as counter-affidavit, in which you state—

Mr. COBB.—(Interrupting.) No; I don't think that was filed. I haven't got that. [77]

Mr. ROBERTSON.—Have you also brought in the original record of accounting between John Tuppela—

(Testimony of Enoch E. Mathison.)

Mr. COBB.—(Interrupting.) Yes. You mean the settlement?

Mr. ROBERTSON.—Yes; the agreement— I'll show you the copy.

Mr. COBB.—I believe that's a copy.

The COURT.—That copy will show it?

Mr. ROBERTSON.—The reason that I am asking counsel about it is that I am prepared to put Mr. Faulkner on the stand to prove the contents of this copy, unless Mr. Cobb is willing to admit the original that was put in evidence. That is why I have Mr. Faulkner up here.

Mr. COBB.—This is a copy. You got this from Mr. Faulkner, I presume. This is his handwriting. I might have the original here if you want it.

Mr. ROBERTSON.—I would ask, at this time, if the Court please, permission to take Mr. Mathison off the stand temporarily and call Mr. Faulkner.

The COURT.—To prove that?

Mr. ROBERTSON.—Yes.

The COURT.—Has it been admitted by the counsel or the other side whether it is a true copy?

Mr. COBB.—What is that?

The COURT.—Has it been admitted by you that it is a true copy?

Mr. COBB.—What do you want to prove by Mr. Faulkner?

Mr. ROBERTSON.—I want to put it in evidence.

Mr. COBB.—Well, put them in evidence.

Mr. ROBERTSON.—And also the counter-affi-

(Testimony of Enoch E. Mathison.)

davit. Look at the back of it and see if that is a true copy.

Mr. COBB.—I presume that it is a true copy. Whether it was [78] ever filed in the case or not, I am not sure.

The COURT.—You admit it to be a true copy?

Mr. COBB.—How is that?

The COURT.—You admit it to be a true copy—the affidavit?

Mr. COBB.—It is a true copy of an affidavit that I drew for Mr. Tuppela to sign. I have no independent recollection whether it was actually signed or not. It was not filed so far as the files show, and I have no recollection about it definitely except that I have a faint recollection that that was withdrawn because there was an error in the latter part of it, but I am not sure about that. So far as that is concerned, it may be admitted as the original.

The COURT.—It may be admitted then, without proving it?

Mr. COBB.—So far as Mr. Faulkner being detained here—

The COURT.—Now, wait a moment. You have admitted these copies to be introduced in evidence—

Mr. COBB.—(Interrupting.) Subject to such objection—

The COURT.—(Continuing.) Are true copies?

Mr. COBB.—Yes.

The COURT.—Well, they may be admitted, subject to such objection as you may make as to their materiality.

(Testimony of Enoch E. Mathison.)

Mr. COBB.—Yes. So far as the original settlement is concerned, they have the original—

Mr. ROBERTSON.—(Interrupting.) I have the original that was handed to us now.

The COURT.—Let them be marked for identification.

Mr. ROBERTSON.—Now, for the purpose of the record, I hand you for identification, counter-affidavit of John Tuppela, case No. 1841—A, John Tuppela vs. the Chichagoff Mining Co., a corporation, which, as I understand it, by agreement of counsel is to be considered to be a true copy of the original. [79] I also hand you a copy of the agreed settlement of accounting in case No. 1841—A, John Tuppela vs. the Chichagoff Mining Company, a corporation—

Mr. COBB.—Well, now, there's the original.

Mr. ROBERTSON.—Oh, I beg your pardon. I hand you the original copy, or one of the original copies of the agreed settlement of accounting, case 1841—A, John Tuppela, plaintiff, vs. the Chichagoff Mining Company, a corporation, defendant.

Q. Now, Mr. Mathison, as I recall, yesterday, where we stopped in your testimony, you had stated that you had written a letter to Mr. Tuppela in the fall of 1918 in the Finnish language, to which you had received no reply, and stated the contents. Now, when is the next time after that that you heard of Mr. Tuppela?

The COURT.—What is the question?

Mr. ROBERTSON.—When is the next time that

(Testimony of Enoch E. Mathison.)

he heard of Tuppela or from Tuppela, if at all?

A. I did not hear directly from Tuppela, but—
The COURT.—Well, that's it.

Q. Did you hear of him?

A. I heard of him; yes.

Q. What, if anything, did you then do as a result of what you heard at that time?

A. I wrote him a letter, asking him whether or not he had retained an attorney.

Q. When was it you wrote him this letter, approximately, as near as you can recall it at this time?

A. It was about the first of March?

Q. What year? [80] A. 1919.

Q. In what language did you write to him?

A. Finnish language.

Q. How did you happen to come to write him in the Finnish language?

A. The same reason that I did formerly. He couldn't read intelligently the English language.

Q. Did you retain any copy of that letter?

A. No; I did not.

Q. What was it written in, typewriter or—

A. Pen and ink.

Q. Pen and ink? A. Yes.

Q. By yourself? A. By myself.

Q. Where did you address that letter?

A. To Juneau.

Q. To John Tuppela himself?

A. To John Tuppela.

(Testimony of Enoch E. Mathison.)

Q. Was the letter returned to you by the post-office? A. It was not.

Q. Did you have postage on it?

A. I did, sir.

Q. What was the contents of the letter, as near as you can recall?

Mr. COBB.—I make the same objection to that as to the other—that it is not the best evidence. There has been no such notice made to produce it that would have enabled us to produce such original, if any such original ever [81] existed or was received by Tuppela.

A. What was that—the contents?

Q. Yes; to the best of your recollection.

A. To the best of my recollection, it was to inquire of him if it were true that he had retained another attorney in Juneau and to let me know at once.

Q. How did you happen to write to him to that effect? A. I had—

Mr. COBB.—We object to his reasons—it's immaterial—as to why he wrote him. That would be purely argumentative.

The COURT.—He may answer; objection overruled.

A. I had been informed by a fisherman—

Mr. COBB.—Well, now, if it's based upon what he heard, it's going to be hearsay. That is the main basis of my objection to it.

Q. Don't state what, if any, statements were made to you by other parties.

(Testimony of Enoch E. Mathison.)

The COURT.—Not as a statement of fact, but as to his reasons for writing.

A. Well, I was informed. That is a proper answer. Well, I was informed by a fisherman—

Mr. COBB.—Do I understand that the Court sustained the objection as hearsay?

The COURT.—I'll allow him to answer not as a fact that the information was true, but as to the reason that he wrote the letter. You may answer.

A. The reason I wrote the letter is that I got information from a fisherman that he had retained another attorney in Juneau.

The COURT.—The jury will not take that as a fact that he retained another attorney, but simply as to the reason for [82] his writing the letter.

Mr. ROBERTSON.—Certainly; we don't consider this competent proof.

The COURT.—I want to instruct the jury on that point.

Q. Now, Mr. Mathison, did you receive any reply to that letter? A. I did not.

Q. Now, that was about, you say, about what time in 1919?

A. That was in the spring of 1919; to the best of my recollection, it was about the first part of March.

Q. Now, after that, some time after that, did you receive some information from Alaska relative to Mr. Tuppela? A. I received a letter from—

Q. From whom?

A. From one J. H. Cobb, some time in the summer of 1919.

(Testimony of Enoch E. Mathison.)

Q. Some time in the summer of 1919?

A. Yes, sir.

Q. I hand you this letter and envelope, Mr. Mathison, and ask you to state whether or not that is the letter that you received and the envelope in which it came?

A. Yes, sir; this is the identical letter and envelope.

Q. I will offer the letter and envelope in evidence.
Mr. COBB.—No objection.

The COURT.—It may be received and filed and marked.

(Whereupon said letter and envelope were marked as one exhibit and numbered Plaintiff's Exhibit No. 5.)

Mr. ROBERTSON.—Letter-head denominated
"J. H. Cobb, Juneau, Alaska, July 17, 1919.

Plaintiff's Exhibit No. 5.

"Mr. Enoch E. Mathison,

"Astoria, Oregon.

"Dear Sir:

"Mr. John Tuppela says he left with you, in March last, a lot of papers pertaining to certain mining claims near [83] Chichagof and Sitka, Alaska. These papers he now needs. Will you please send them either to me or to John Tuppela, Juneau, Alaska.

"Very truly yours,

"J. H. COBB."

And on the envelope "J. H. Cobb, Juneau, Alaska; Mr. Enoch E. Mathison, Astoria, Oregon."

(Testimony of Enoch E. Mathison.)

Now, did you know Mr. Cobb at that time, Mr. Mathison? A. No, sir.

Q. Had you ever met him? A. No, sir.

Q. Had you ever heard of him? A. No, sir.

Q. Did you know in what business, if any, he was engaged? A. No, sir; I did not.

Q. You had no information whatsoever as to his business or occupation?

A. No, sir; I did not. No one told me—

Q. Now, what did you do in reply, if anything, to that letter? A. I wrote to Tuppela at once—

Q. (Interrupting.) You wrote to—

A. (Continuing.) Or within a day or so.

Q. You wrote to John Tuppela?

A. Yes; stating—

Q. (Interrupting.) After you received this letter from Mr. Cobb you wrote to John Tuppela; is that right? A. Yes.

Q. What did you write to Mr. Tuppela?

A. I stated— [84]

Mr. COBB.—We object to that, for the same reason as to the other. We make the same objection. They have given us no such notice—

The COURT.—(Interrupting.) Objection overruled.

A. I—

Q. Wait a minute. You say you did write, then to Mr. Tuppela? A. I did.

Q. About what time did you write him, as best you recall now?

A. Why, shortly after I received this letter—

(Testimony of Enoch E. Mathison.)

probably the same day or thereafter.

Q. Where did you address your letter to?

A. Juneau, Alaska.

Q. Was there any postage on the letter?

A. Yes, sir.

Q. Did the letter ever come back to you?

A. It did not.

Q. How did you write the letter, Mr. Mathison—in English or Finnish?

A. In the Finnish language.

Q. And on the typewriter or by pen and ink?

A. Pen and ink.

Q. Did you keep a copy of the letter?

A. No; I did not; at least, I could not find any.

Q. You could not find any? A. No, sir.

Q. State at this time, as near as you can recollect what the contents of the letter was?

A. As near as I can recollect, now, it was that I stated I had received a letter from J. H. Cobb, of Juneau, asking for some papers, and that he had never sent me the papers that [85] *that* he went after, and I again asked him whether or not he had retained an attorney here, as I had been informed previously and had written him previously to let me know so that I could act accordingly. That is the substance of the letter.

Q. Did you ever receive any reply to that letter?

A. I did not, sir.

Q. Now, then, Mr. Mathison, as I understand you to say, during all this time you had not heard from Tuppela direct? A. No; I did not.

(Testimony of Enoch E. Mathison.)

Q. Now, after this did you make any further inquiries in an endeavor to locate Tuppela?

A. Yes; I did.

Q. Do you recall when that was?

A. That was during the summer of 1919.

Q. What did you do then?

A. I ascertained from people that came from here as to whether or not he had retained an attorney.

Mr. COBB.—Now, we object to that as hearsay.

Mr. COBB.—We're not endeavoring to prove the fact, the conceded fact, that in 1919, he had attorneys and had this suit in court. All we're trying to prove is what Mr. Mathison was doing to ascertain—

The COURT.—(Interrupting.) Yes; objection overruled. It was admitted that he retained an attorney. You may proceed.

A. I was informed that he had an attorney here and had the case, trial in the court.

Q. What did you do, if anything, after learning that information?

A. Of course, I couldn't do anything, so far as that case was [86] concerned. I didn't feel it was compulsory—

The COURT.—(Interrupting.) Well, now, he simply asked you what you did.

A. Well, after not hearing from Tuppela and the matter being indefinite, I wrote then to the Clerk of the Court here.

Q. To the Clerk of this Court?

(Testimony of Enoch E. Mathison.)

A. Yes; to find out the status of the case, and at that time—

The COURT.—(Interrupting.) Well, that's all.

Q. I hand you here, Mr. Mathison, a letter dated February 20, 1920, and ask you to state whether or not that is your signature. Is that your signature to that letter? A. Yes; that's the letter.

Q. Is that the letter that you state you wrote to the clerk in February, 1920? A. Yes, sir.

Mr. ROBERTSON.—I will offer that in evidence.

Mr. COBB.—No objection. I want the answer to go in with it.

(Whereupon said letter was received in evidence and marked Plaintiff's Exhibit No. 6.)

The COURT.—You may read it to the jury. Never mind passing it around.

Mr. ROBERTSON.—(Reads.) "Law Offices of Enoch E. Mathison, Astoria, Oregon, February 20, 1920.

Plaintiff's Exhibit No. 6.

"Clerk, U. S. District Court,

"Juneau, Alaska,

"Dear Sir:

"Would you kindly inform me whether or not there is a case pending in your court wherein John Tuppela is plaintiff against a certain mining company at Chichagoff, or Sitka, Alaska, or whether he has had any case pending there within the last two years or so. [87]

"Thanking you for an early reply, I remain,

"Respectfully yours,

"ENOCH E. MATHISON."

(Testimony of Enoch E. Mathison.)

Q. Now, Mr. Mathison, I hand you a letter here, did you receive any reply to that letter?

A. I received a reply from the Clerk of the court, or the Clerk's office.

Q. Is that the reply you received from the Clerk (handing letter to witness)?

A. Yes; that is the reply.

Mr. ROBERTSON.—I will offer that in evidence. Any objection, Mr. Cobb?

Mr. COBB.—What is that?

Mr. ROBERTSON.—You have no objection to my offering this letter in evidence?

Mr. COBB.—Oh, no; in fact, I rather want it in.

(Whereupon letter mentioned was received in evidence and marked Plaintiff's Exhibit No. 7.)

Mr. ROBERTSON.—On the letter-head of the (reads): "Department of Justice, United States District Court, First Division, District of Alaska, Clerk's office, Juneau, March 3, 1920.

Plaintiff's Exhibit No. 7.

"Enoch E. Mathison, Esq.,

"Attorney at Law,

"Astoria, Oregon.

"Dear Sir:

"Your letter of February 20th at hand, and in reply to your inquiry therein, I would say that an equity suit was begun on May 10, 1919, by John Tuppela, plaintiff, against the Chichagof Mining Company, a corporation, defendant. The plain-

(Testimony of Enoch E. Mathison.)

tiff's attorneys are John R. Winn and J. H. Cobb, both of Juneau. The defendant is represented by H. L. Faulkner of Juneau, and former Supreme Court Justice [88] O. G. Ellis, of Tacoma, Wash.

"The relief prayed for in the complaint was, among other things, that plaintiff be decreed to be the owner of an undivided one-half interest in certain lode claims situated at or near Klag Bay, on the west side of Chichagof Island, Alaska; that an accounting be rendered plaintiff for the gold extracted from these claims, and that, pending the final determination of the suit, a temporary injunction issue.

"The trial began on November 20, 1919, was concluded on November 29th, and taken under advisement.

"On February 25th, 1920, a decree was entered, dismissing the complaint.

"Yours truly,

"J. W. BELL,

"Clerk.

"By John T. Reed,

"Deputy."

Q. Now, Mr. Mathison, at that time, did you write to anyone else in Juneau, the time that you last wrote to the Clerk? A. I did.

Q. Who else did you write to? .

A. To J. H. Cobb.

Q. To Mr. Cobb. This Mr. Cobb here?

A. I suppose that's the same Cobb.

Mr. ROBERTSON.—Have you the original of

(Testimony of Enoch E. Mathison.)

that letter, Mr. Cobb? I made a demand upon you to produce it.

Mr. GROVER WINN.—What date?

Mr. ROBERTSON.—February 20, 1920.

Mr. COBB.—Yes. [89]

Mr. ROBERTSON.—May I have it, please?

Mr. COBB.—Yes.

Q. I will ask you to state whether or not that is the letter that you wrote to Mr. Cobb at that time, Mr. Mathison—the original letter?

A. Yes, sir; that's the letter.

Mr. ROBERTSON.—I will offer that in evidence.

Mr. COBB.—No objection.

(Whereupon said letter was received in evidence and marked Plaintiff's Exhibit No. 8.)

Mr. ROBERTSON.—Letter-head of "Enoch E. Mathison, Attorney at law, Spexarth Building, Astoria, Oregon.

Plaintiff's Exhibit No. 8.

"February 20, 1920.

"Mr. J. H. Cobb,

"Juneau, Alaska.

"Dear Sir:

"Last summer you wrote me a letter regarding the whereabouts of John Tuppela, and asking for certain papers he may have left with me. The letter was lost and I have just found the same. Would you kindly let me know whether he is in Juneau or not, or whether you know of his where-

(Testimony of Enoch E. Mathison.)

abouts, as he has some matters pending here which he had neglected to complete.

“Respectfully yours,
“ENOCH E. MATHISON.”

Q. Now, what, if any, answer or reply did you receive from Mr. Cobb or anyone else to that letter, Plaintiff's Exhibit No. 8, that you wrote to Mr. Cobb on February 20, 1920?

A. I received no reply. [90]

Q. Did you ever receive a reply to that letter, Mr. Mathison? A. No, sir.

Q. Now, then, did you at any time after that again take this matter up with Mr. Tuppela?

A. I think it was the same year, in July, I believe.

Q. July, 1920? A. Yes, sir.

Mr. ROBERTSON.—I now ask if counsel has the original letter written on July 7, 1920, by Mr. Mathison to Mr. John Tuppela. (Letter produced by Mr. Cobb.)

Q. I call your attention to this letter, on a purported letter-head of Mathison & Mannix, under date of July 6, 1920, and ask you to look at it, Mr. Mathison, and state whether or not that is the letter you wrote to Mr. Tuppela on July 7, 1920?

A. Yes, sir; this is the letter.

Mr. ROBERTSON.—I offer that letter in evidence.

Mr. COBB.—No objection.

(Whereupon said letter was received in evidence and marked Plaintiff's Exhibit No. 9.)

Q. Referring to this, Plaintiff's Exhibit No. 9,

(Testimony of Enoch E. Mathison.)

Mr. Mathison, I call your attention to the fact that it was addressed to Mr. Tuppela at Juneau—that is, on the letter. Do you know whether or not the envelope was mailed to Mr. Tuppela at Juneau?

A. Yes, sir; the envelope was addressed to John Tuppela by registered mail, with a return card demanded.

Q. At Juneau? A. Juneau, Alaska.

Mr. ROBERTSON.—Written on a letter-head of Mathison & Mannix (Reads): [91]

Plaintiff's Exhibit No. 9.

“MATHISON & MANNIX,

“Attorneys at Law.

“Astoria, Oregon, July 7, 1920.

“Mr. John Tuppela,

“Juneau, Alaska,

“Dear Sir:

“Information has been brought to me to the effect that you were successful in the legal proceedings instituted by you against the Chichagof Mining Corporation, arising out of matters in connection with the contract you entered into with me, herein-after more particularly mentioned. Previously, after receiving information that you probably were located at Juneau, Alaska, I wrote you several letters to substantiate that fact, but received no reply from you. I have endeavored to get in touch with you since the summer of 1918, so that I could proceed with the litigation, but no one seemed to know where you went to. On March 3, 1920, in answer

to my inquiry, I received a communication from the Clerk of the United States District Court at Juneau, Alaska, to the effect that you had started these proceedings, but outside of these two sources of information I have not received any information as to what you were doing in the premises.

“I am writing this letter for information. I call your attention at this time specifically to the fact that on the 11th day of March, 1918, you entered into a contract with me, the same being in writing, and by the terms of said contract you retained me as your attorney to prosecute your claims against this particular corporation, or any other parties holding adverse to you, in the matter of those certain mining claims which appear to have been the subject-matter of the litigation referred to hereinabove. By the terms of this [92] agreement I was empowered to proceed with all matters pertaining to your interest in said mining claims, and the rate of compensation which I was to receive was clearly set forth in said contract, you retaining a copy of the same. At this time I respectfully request that you examine said contract and then communicate with me as to what you will do in the matter of compensating me for the work which I did under said contract and for the damage which I suffered because of the breach of said contract on your part.

“I do not propose in this letter to recite the work which I did in your behalf after the execution of said contract as that is beyond the purview of this

(Testimony of Enoch E. Mathison.)

letter, and you personally know concerning the large amount of the work which I did on your behalf, but I wish at this time to state that I am able to conclusively show that I was at all time ready, able and willing to fully carry out all the terms of said agreement to be kept and performed on my part, and that you, shortly after the execution of this agreement, failed to keep your part of the same and left for parts unknown to me, thus rendering it impossible for you to properly conduct your case in accordance with the terms of said agreement.

“As stated before, I will not undertake to rehearse all the facts in relation to the matter at this time, but request that you give this matter your early and earnest consideration to the end that any litigation may be avoided and a prompt and satisfactory settlement arrived at.

“Trusting to hear from you at an early date, I remain,

“Very truly yours,

“ENOCH E. MATHISON.”

Q. Now, did you receive any answer to that letter from him? A. I did not. [93]

Q. Did you receive any answer from anybody else to that letter?

A. I did, from J. H. Cobb.

Q. I hand you a letter here and ask you whether or not that is the answer you received from Mr. J. H. Cobb at that time?

A. Yes, sir; that is the answer that I received.

Mr. ROBERTSON.—I will offer that in evidence.

Mr. COBB.—No objection.

(Whereupon said letter was received in evidence and marked Plaintiff's Exhibit No. 10.)

Mr. ROBERTSON.—Letter-head of J. H. Cobb (reads):

Plaintiff's Exhibit No. 10.

“Juneau, Alaska, August 5, 1920.

“Mr. Enoch E. Mathison,

“305 Spexarth Bldg.,

“Astoria, Oregon.

“Dear Sir:

“Mr. John Tuppela received your letter of July 7, to-day, and I have carefully read it to him. He has also shown me a duplicate original of the contract you mentioned, dated March 11, 1918. Mr. Tuppela states that after the contract was made and after waiting on you several months to begin action, he notified you that the contract was at an end, for your failure to act.

“Mr. Tuppela employed Judge John R. Winn to bring a suit to recover his property, in May, 1919. Judge Winn associated me with him. We brought the suit and were ultimately successful. However, the lower court held against us, and one of the grounds of its decision was that Tuppela was guilty of laches in waiting so long (17 months) to bring his suit. Also in July, 1919, I wrote you asking for any papers Tuppela might have left with you. To this letter I never had the courtesy of an answer.

“Under these circumstances, I wholly fail to see

(Testimony of Enoch E. Mathison.)

how you have any rights under your contract. On the other hand, if [94] the United States Circuit Court of Appeals had affirmed the ruling of the lower court on the question of laches, Tuppela would probably have had a serious action against you for negligence.

“Very truly yours,

“J. H. COBB.”

A. Mr. Mathison, I call your attention to the statement made by Mr. Cobb in that letter, in which he says that “Mr. Tuppela states that after the contract was made and after waiting on you for several months to begin action, he notified you that the contract was at an end for your failure to act.” I ask you to state, Mr. Mathison, what, if any, notification John Tuppela, or anyone on his behalf, ever gave you that this contract between you and Mr. Tuppela was at an end on account of your failure to act, or on any other account whatsoever?

A. There was no statement made to me to that effect, or in any way to this day, excepting what he says in the answer to the complaint.

Q. Except in the pleadings in this case?

A. That’s all.

Q. Now, at the time that you wrote Mr. Cobb this letter of February 20, 1920, Plaintiff’s Exhibit No. 8, to which you have already stated that you received no reply, after that letter was written, what, if any, notice or demand did you ever receive from Mr. Tuppela or Mr. Cobb or from anyone whomsoever, acting on behalf of Mr. Tuppela, that the

(Testimony of Enoch E. Mathison.)

suit had been lost in the lower court; that is, in this court, and of the costs, and so forth, in order to appeal it to the United States Circuit Court of Appeals?

Mr. COBB.—We object to that as irrelevant and immaterial [95] for any purpose. I don't see how it is at all relevant that Mr. Tuppela or his attorneys, up here, why they should call upon him to help pay any part of the costs in the case.

The COURT.—Well, a part of the issues that you state—

Mr. COBB.—(Interrupting.) How is that?

The COURT.—That is a part of the contract—that he should furnish money, all moneys for the prosecution of the suit—the original contract.

Mr. COBB.—How is that?

The COURT.—It's upon the issue made by you in your answer that the original contract contemplated the furnishing of all moneys for the prosecution of the suit.

Mr. COBB.—Yes, we allege that.

The COURT.—Yes.

Mr. COBB.—But that part of it is not in evidence yet.

The COURT.—It is a matter of replication or surrebuttal, if you wish to introduce evidence on that point. Is that your point?

Mr. COBB.—Well—if we ever reach that point of the case. I don't know how the testimony will develop, but just now it is wholly immaterial.

Mr. ROBERTSON.—Very well, if that's the

(Testimony of Enoch E. Mathison.)

point. My recollection is that Mr. Cobb stated in his opening statement, made demands upon Mr. Mathison to participate in the costs of the suit.

Mr. COBB.—No; you misunderstood me. Let's straighten that out. I said that he was notified by the Clerk of the court here that the case had been lost and that he neither offered to aid in or assume any part of the heavy costs of taking it up. Now they are asking if we called on him.
[96]

Mr. ROBERTSON.—Very well.

The COURT.—I'll sustain the objection at the present time.

Q. Now, then, Mr. Mathison, after this letter that you wrote to Mr. Tuppela on July 7, 1920, and also the letter which Mr. Cobb wrote to you in answer to it, what did you do after that, if anything, in the way of making any further inquiries in regard to the matter? Did you do anything further, I mean, in the way of making inquiries at that time?

A. At that particular time I did not.

Q. What, if anything, did you do after that eventually, I mean to say?

A. Well, I kept in touch with the case to see what they were doing and found out that they had appealed the case to the Appellate Court and later on I wrote to the clerk over there to ascertain the status of the case.

Q. What I want to get at is, you eventually brought this suit?

(Testimony of Enoch E. Mathison.)

A. I then sent Mr. Mannix here to investigate the situation and he came up here in 1921.

Q. And after that, you did what?

A. I asked him to go and see Mr. Tuppela.

Q. I mean what did you do after that?

A. After that I brought suit.

Q. Now, Mr. Mathison, what do you say you have been damaged by the action of Mr. Tuppela in regard to this contract?

Mr. COBB.—I object as calling for a conclusion of the witness, and irrelevant and immaterial.

The COURT.—Objection sustained.

Q. Now, Mr. Mathison, during the time that Mr. Tuppela was in Astoria, did you make any advances or loans of money to him?

A. Yes; he came to me— [97]

Q. Well, now— A. Yes, I did.

Q. How did it come about that you made such advancements or loans?

A. He came to me and asked to borrow a few dollars from time to time.

Q. Did you keep any account of it, Mr. Mathison?

A. I kept account of some of the sums; some of the largest sums.

Q. You kept track of the largest amounts, did you? A. Yes; substantially all.

Q. I will ask you to look at the statement that is attached to your complaint in this case and state whether or not that is a correct statement of that—

Mr. COBB.—(Interrupting.) I object to that as

(Testimony of Enoch E. Mathison.)

calling for a conclusion. Let him testify to the items.

The COURT.—Yes; that is not the right way to get at it.

Q. Have you got any account of it?

A. I have in a small pocketbook.

The COURT.—The original memorandum?

Q. Is your original memorandum here?

A. Yes, sir. (Witness produces notebook.)

Q. What amounts do the original memoranda show of money advanced?

A. You want me to read the amounts?

Q. Read them slowly.

Mr. COBB.—I object to that until he proves it. Are those the memoranda you kept at the time?

The WITNESS.—Yes, sir.

The COURT.—And each statement was made on the date purported to have been made or thereabouts?

The WITNESS.—Yes; your Honor. [98]

The COURT.—You may testify.

The WITNESS.—(Referring to memorandum.)
March 11, \$8—

Q. March 11 of what year?

A. In 1918. March 18, \$8.25; March 23, \$12; March 30, \$10; April 12, \$10; April 16, \$5; April 22, \$15; April 30, \$12; May 6, \$5; May eleventh, \$6; May 15, \$2.25; May 18, \$12; May 20th, \$8; May 30th, \$10; June 5th, \$15; June 10, \$10; June 15th, \$15; June 18, \$3; June 25th, \$15; June 29, \$5; July 3, \$10; July 6, \$60; July 17, \$8; July 19,

(Testimony of Enoch E. Mathison.)

\$5; July 27, \$15—

Q. \$15? A. July 27, \$15.

Q. What, if anything is shown on July 22d?

A. Ten.

Q. Ten on July 22d, and July 27th, how much?

A. Fifteen.

Q. Very well.

A. August 7, \$10; August 12, \$10; August 16, \$15; August 20th, \$8; August blank, \$25.

Q. August blank, \$25. Do you know approximately when that was; what the date of that was?

A. It was just a day or two before the close of the fishing season.

Mr. COBB.—How is that?

A. (Continuing.) Which is the 25th.

Mr. ROBERTSON.—He said the 25th.

Q. About what time of the month?

A. I would judge approximately, it was about the 23d or it may have been on the 24th.

Q. That is, to the best of your recollection? [99]

A. Yes.

Q. You know how much those amounts aggregated that you have just read?

A. The total amount is \$362.50.

Q. Has Mr. Tuppela or anyone else ever repaid those amounts to you? A. No, sir.

Q. Ever paid any portion?

A. None whatever, sir.

Q. What was the understanding when you advanced them, as to whether or not they were to be repaid? A. They were to be repaid?

(Testimony of Enoch E. Mathison.)

A. By whom? A. By Mr. Tuppela.

Q. To whom? A. To me.

Mr. ROBERTSON.—I think that's all.

Cross-examination.

(By Mr. COBB.)

Q. Mr. Mathison, you say you're an attorney of the State of Oregon and live at Astoria?

A. Yes, sir.

Q. You were admitted to practice in the courts of Oregon and Washington? A. Yes, sir.

Q. Ever been admitted to practice in the courts of Alaska? A. No, sir.

Q. You knew John Tuppela some years ago?

A. Yes, I did. [100]

Q. You saw him in the winter of 1917 and '18?

A. Yes, sir.

Q. Did you go up to Portland about November or December for the purpose of seeing him in Portland, Oregon?

A. I did, once or twice. I believe I went to see him twice.

Q. Now, when he went down to Astoria, that was about the last of December? He was released from the asylum on the 19th of December.

A. About there.

Q. Yes. Did you suggest to him that he employ you as his counsel? A. No.

Q. You know if anybody else suggested it to him?

A. I don't know that anyone suggested to him.

Q. Do you know a lawyer in Portland by the name of William Davis? A. No. In Portland?

(Testimony of Enoch E. Mathison.)

Q. Yes. A. Yes; I know him.

Q. Now, isn't it a fact that at the time you went down and got Mr. Tuppela to go down to Astoria, didn't Mr. Tuppela have a contract with Mr. Davis to bring suit?

A. I think that he had some sort of understanding with him.

Q. You knew that?

A. He told me that he had another contract.

Q. Now, wasn't it at your request that Mr. Davis released Mr. Tuppela from that contract, mutually canceled, so that you could take the case?

A. No, sir.

Q. That isn't true? [101] A. No, sir.

Q. You're positive of that? A. Sir?

Q. You're positive of that?

A. I'm positive of that.

Q. You haven't examined Mr. Davis' deposition, on file here in the Koskilainen case, have you?

A. I have.

Q. You have? A. Yes.

Q. What for?

Mr. MANNIX.—Wait a minute. We object to that as not proper cross-examination.

Mr. COBB.—I'm examining him for character as well as other things.

The COURT.—Yes; objection overruled.

Q. What for? A. For information.

Q. For information? A. Yes, sir.

Q. You wanted to see, didn't you, how far you could go without being caught up with—that's the

(Testimony of Enoch E. Mathison.)

information you wanted; that was the purpose of it, wasn't it?

A. I don't understand your question.

Q. You don't? The information you wanted was to see how far you could go in testifying without being caught up with, isn't it?

A. I don't understand what you mean by "caught up."

Q. Well, we'll let your answer go at that. Now, you testified yesterday that Doctor Coe advised that Mr. Tuppela shouldn't [102] come to Alaska for a while.

A. That is a fact.

Q. The question is, didn't you so testify?

A. I believe I did.

Q. When was that advice given?

A. In the fall of 1917.

Q. In the fall of 1917? A. Yes.

Q. Now, when did you begin negotiations with Mr. Tuppela to act as his attorney?

A. March 11th is the date.

Q. Had you any negotiations before that?

A. I did.

Q. What?

A. I had interviews with him regarding his contentions.

Q. When did you send or telegraph to Sitka for a copy of the probate proceedings in the matter of the estate of John Tuppela, an insane person?

A. Shortly after he came to Astoria.

Q. Some time in January, 1918?

A. I believe that is the time.

(Testimony of Enoch E. Mathison.)

Q. You got them back about the first of February, some time in there? A. Yes, sir.

Q. Well, now, when this contract was entered into— Before I get to that, at the time Mr. Tupela was released from the asylum, he was utterly penniless, wasn't he?

A. I don't know. I didn't inquire as to that. I know that he had friends that were taking care of him up to that time. [103]

Q. Didn't you know that he didn't have any money?

A. He did say that he had money, yes, in Alaska.

Q. He had none down there?

A. I don't know whether he had any down there.

Q. When did you find out that he was utterly penniless?

A. That was after the contract was made.

Q. On the day it was made?

A. No; later; quite a bit afterward.

Q. Well, you just testified a while ago that you lent him some money on the day that the contract was made. A. Yes.

Q. Didn't you know that he was broke, then?

A. I didn't know that he was broke; there is a lot of men borrow money without being broke—

The COURT.—(Interrupting.) Well, now, the question—

Mr. COBB.—(Interrupting.) Didn't you know—

The COURT.—(Interrupting.) Wait a moment. That question calls for a direct categorical answer—yes or no. Did you know that he was broke at

(Testimony of Enoch E. Mathison.)

that time? A. No; I did not.

The COURT.—That's it.

Q. What did you lend him that \$8 for on that day?

A. He asked for that money and I loaned it to him.

Q. You just loaned it to him. Now, you knew, didn't you, that it was going to cost something to bring this suit up here?

A. Oh, yes. All suits cost money.

Q. Was Tuppela to furnish the money for it?

A. He was.

Q. Cash? A. Cash, or whatever—

Q. (Interrupting.) Advance it to you as you needed it? [104] A. Yes.

Q. Did you ever ask him for any money?

A. Yes, sir.

Q. And then turned around and lent it to him?

A. I asked him for money.

Q. When?

A. Some time after the contract was made.

Q. Well, when?

A. Oh, probably two months afterward.

Q. Two months afterward. Did you think he had any money? A. Yes.

Q. You had been lending him money every few days to eat on during that period, you say?

A. Yes, sir.

Q. And yet, two months after that you asked him for money? A. Yes.

Q. Had you any idea what the suit was going to

(Testimony of Enoch E. Mathison.)

cost?

A. Well, it wasn't definitely decided that it would be necessary to bring suit.

Q. What did you want the money, then, for?

A. I didn't want the money. I asked him whether he had money, yes, to go to Alaska and get this different information when the time came.

Q. Well, you made this contract on the eleventh day of March, 1918? A. Yes, sir.

Q. And there was no talk at that time that you were to advance any money at all for the purpose of carrying on the litigation? A. No, sir. [105]

Q. If it cost thousands of dollars, as it did, you expected Tuppela to furnish it?

A. I certainly did.

Q. Did you ever get any money from him?

A. I did not.

Q. For expenses? A. No, sir.

Q. Now, then, you stated yesterday, that you thought you might bring this suit to recover this Alaska property up here in the State of Washington, didn't you?

A. I don't recall just the exact words that I stated, but my idea was, at that time, that if it became necessary to start suit, it was possible that it could be brought in Washington.

Q. Did you ever find out that the courts of the State of Washington had no jurisdiction over property in Alaska? A. Well—

Q. (Interrupting.) Just answer the question yes or no. A. Oh, yes; I know that.

(Testimony of Enoch¹ E. Mathison.)

Q. When did you find that out?

A. Well, that is a general rule.

Q. Oh, yes. When did you find it out? You say you were going to bring suit in the State of Washington, or thought you would. When did you first find out that such a thing was an impossibility?

A. When I went to law school, I believe.

Mr. ROBINSON.—Wait a minute.

The COURT.—What is the objection?

Mr. ROBERTSON.—He is asking him now when he first found out that fact. He hasn't testified to anything of the kind. He's insinuating now. Let him ask a direct question. [106]

The COURT.—Yes; objection sustained.

Q. Well, you did find out, then, did you?

A. I knew that as a general law.

Q. You know that as a general law. Still you figured on bringing it in the State of Washington first? A. Oh, no.

Q. Oh, you didn't? A. No.

Q. Now, then, did you know where the head office of the Chichagoff Mining Company was?

A. In Tacoma.

Q. Did you ever go up there to see them?

A. No, sir.

Q. Ever write to them? A. No, sir.

Q. Made no effort, then, to settle the case?

A. It wasn't advanced that far.

Q. Oh, it wasn't advanced that far. Well, you never did? A. No; I did not.

Q. You did not. In the event that it wasn't

(Testimony of Enoch E. Mathison.)

settled, you were going to bring suit?

A. That would be the last resort.

Q. That would be the last resort. A. Yes.

Q. You made no effort, however, to settle it?

A. I did not, since the case wasn't advanced that far.

Q. Well, just answer my question?

A. I did not; that is the way I have answered that.

Q. Now, you had a little over two weeks in February, 1918, after the contract was made. You didn't either attempt to settle [107] it or bring suit? A. What was that question?

Q. I said you had, after the contract was signed, something over two weeks in the month of February, 1918, in which either to make an effort to settle it or bring suit? A. In February, 1918?

Q. Yes. A. The contract was signed in March.

Q. I mean March. A. March 11.

Q. March 11. You had twenty days in that month, didn't you, to make an effort to settle it or bring suit, and you didn't do either?

A. No; I told you—

Q. (Interrupting.) All right. Just answer the question. A. No, I did not.

Q. Now, in April did you make any effort to settle it or bring suit? A. I did not.

Q. Did you in May?

Mr. MANNIX.—I object to this. Witness has testified that he never made any effort to settle it. I don't see the use of all the repetition.

(Testimony of Enoch E. Mathison.)

The COURT.—Objection overruled; he may state.

A. No, sir; I did not make an effort to settle it. The case was not advanced to that state.

Q. Now, just answer my questions. You can make your explanations later to your own counsel. You didn't in June? A. No, sir. [108]

Q. Nor in July? A. Nor in July.

Q. Nor in August? A. Nor in August.

Q. Nor in September?

A. Nor in September.

Q. October? A. No, sir.

Q. November? A. No, sir.

Q. Or December, 1918? A. No.

Q. No. Now, you say in your complaint— The original complaint in this case was sworn to by you, wasn't it? A. I believe so.

Q. Now, I call your attention to this statement in your complaint: "That the plaintiff contemplates the institution of legal proceedings against the Chichagoff Mining Company, a corporation, for the recovery of the said defendant's interests in said properties and all moneys due said defendant because of the withholding from said defendant and depriving him thereof and because of the development of the same, and that it was mutually agreed between plaintiff and said defendant that said defendant would go to Alaska as soon as possible to obtain an interview with certain important witnesses and procure certain letters and documents which were important to be had at that time."

Now, when was that?

(Testimony of Enoch E. Mathison.)

A. That the plaintiff—?

Q. That you and Tuppela—you refer to it as plaintiff and defendant— [109] when was it that this matter occurred—that you contemplated the bringing of this suit, as you say?

A. After I had secured sufficient evidence to justify bringing the suit.

Q. Perhaps I didn't make my question plain. You then continue: "Thereafter, and in pursuance with said agreement with plaintiff, said defendant left said Astoria on or about the — day of September, 1918, for the purpose of going to Juneau, Alaska, getting the information, documents and letters required and returning to Astoria at the earliest date possible."

The COURT.—Is that in the first cause of action?

Mr. COBB.—That's in the first cause of action. But I am asking him—he said he swore to it.

The COURT.—I take it the second cause of action was one of the issues of your case.

Mr. COBB.—Yes, because the same thing is repeated, but not so fully, in the second.

Q. Now, that occurred what time in September? You left the date blank.

Mr. ROBINSON.—What is what that occurred, Mr. Cobb?

A. That Tuppela left Astoria?

Q. Yes; in pursuance of this agreement?

A. Well, I wasn't sure just when he left. He left right after the fishing—

Q. (Interrupting.) When was he fishing?

(Testimony of Enoch E. Mathison.)

A. Sir.

Q. When was he fishing?

A. He had not been fishing, but he had an old miner friend here who had been in Juneau and he owed him some money, and was [110] going to Alaska also and that he was going at the same time, but that he couldn't go until the fishing was over, which would be a few days after the 25th—the close of the fishing season.

Q. He left at that time and everything was perfectly friendly between you? A. Yes, sir.

Q. And he was coming up to Alaska to see about his case? A. Yes, sir.

Q. You didn't come with him? A. I did not.

Q. In July you made arrangements at one time to come and then canceled your reservation?

A. Yes; that is true.

Q. Was that because you didn't have enough money to pay expenses? A. It was not.

Q. It was not? A. No.

Q. You knew where Tuppela was going, didn't you? A. Yes.

Q. Is that the only time that he ever left down there after the contract was signed?

A. Left Astoria?

Q. Yes; left down there?

A. Yes; he left once before.

Q. Where to?

A. To come here to Alaska.

Q. Well, you knew about that, didn't you?

A. Yes.

(Testimony of Enoch E. Mathison.)

Q. And he came back in a few days? [111]

A. Yes, sir.

Q. When was it that he left for parts unknown to you?

A. Well for parts unknown, he left on September first, or after the fishing season.

Q. For parts unknown?

A. Well, he left for Alaska.

Q. Now, I call your attention to your letter to Tuppela, dated July 7, the day after the Circuit Court of Appeals decided this case in his favor, in which you remind him— I'll read it. It's a long sentence, and I'll have to read all of it to make any sense (reads):

“I do not propose, in this letter, to cite the work which I did in your behalf after the execution of said contract, as that is beyond the purview of this letter, and you personally know concerning the large amount of work which I did on your behalf, but I wish, at this time, to state that I am able conclusively to show that I was at all times, ready, able and willing, fully to carry out all the terms of said agreement to be kept and performed on my part, and that you, shortly after the execution of this agreement failed to keep your part of the same and left for parts unknown to me.”

Now, when was it that he left for those parts unknown to you?

A. Well, so far as hearing from him, it was for parts unknown. I couldn't—I tried to ascertain

(Testimony of Enoch E. Mathison.)

where he was and I couldn't locate him.

Q. Well you knew at that time when you wrote that letter that he had come to Alaska?

A. I certainly did. [112]

Q. Why did you say "parts unknown," then?

A. Well, I didn't know—

Q. (Interrupting.) On which occasion were you telling the truth, if either?

Mr. MANNIX.—Just a minute. Let the witness answer the question.

A. I'm telling the truth on both.

Q. He left with your full knowledge and consent for Alaska? A. Yes, sir.

Q. And then he left for parts unknown?

A. Well, if you want to take it that way.

Q. All right. I want to know how the jury will take it. You're talking to them; not to me.

Both of those statements are true?

A. Yes, sir.

Q. When you wrote that letter, you knew exactly where he had gone to, didn't you?

A. Yes, sir.

Q. Now, then, in January, 1919, you didn't make any effort to settle the case or to bring suit, did you? A. No.

Q. Did you in February, 1919?

A. No; I was trying to locate Mr. Tuppela during all that time.

Q. You knew he had left for Alaska, didn't you?

A. Yes.

Q. Couldn't you come up here?

(Testimony of Enoch E. Mathison.)

A. But I had heard that he was sick with the flu in Tacoma. I traced that up and found out he wasn't there.

Q. You did? A. Yes, sir.

Q. Did you do anything in March, 1919, either to make an effort [113] to settle the case or to bring suit? A. In March, 1919?

Q. Yes.

A. That was about the time when I heard he had retained counsel here by the name of Winn.

Q. Well, you afterwards found out that he hadn't retained Judge Winn? A. Sir?

Q. You afterwards found out that he hadn't retained Judge Winn?

A. I afterwards found out that he had retained Winn in December, 1918.

Q. Did you know Judge Winn?

A. I did not.

Q. Did you make any objections to his being retained? A. I did not.

Q. You said you didn't know me either. When you heard we had been employed on the case, did you make any objection to either of us?

A. No; I thought J. H. Cobb was a real estate man or something like that.

Q. Have you the Federal Reporter in your office?

A. No, sir.

Q. (Continuing.) For the last twenty-five years?

A. No, sir.

Q. You never examined that to find out that I had appeared before the Circuit Court of Appeals

(Testimony of Enoch E. Mathison.)

dozens of times in the last twenty-five years?

A. I never knew of an attorney having a letter-head that didn't show that he was an attorney.

Q. That's something new.

A. That's something new. [114]

Q. You didn't answer that letter, did you?

A. I answered it through Mr. Tuppela.

Q. In answer to me?

A. Well, your letter don't ask a letter to you, and I didn't know you. I thought you were a real estate agent, and I have had some dealings with real estate agents, so I didn't—

Q. In your letter later you stated that you had lost that letter? A. It was mislaid; yes.

Q. Did you send Mr. Tuppela any of his papers?

A. I didn't have any of his papers.

Q. He had taken them all out of your hands when he left down there?

A. He didn't have any papers. He had commitment papers, copies of them; copies of which I had certified to.

Q. He had taken all those out of your hands when he left there?

A. They were unnecessary, because I had certified copies.

Q. Well, just answer my question?

A. Yes; yes; yes.

Q. Took all of his papers down there in August or September, 1918, and came to Alaska?

A. He didn't take them; he had them in his possession all the time.

(Testimony of Enoch E. Mathison.)

Q. Had them in his possession all the time?

A. Yes.

Q. You never had them?

A. I never had them.

Q. You didn't write and inform us of that fact, however, did you?

A. No; but I wrote to Tuppela. [115]

Q. You wrote to Tuppela? A. Yes.

Q. In Finnish?

A. Yes. Had you told me, written me that you were an attorney and was his attorney, I certainly would have written you.

Q. You certainly would have. You don't write to real estate agents, however?

A. Quite a number of those sharks I haven't any use for.

Q. And so when a man has his name on his paper and nothing else you assume that he is a real estate agent? A. Sir?

Q. When a man has his name on his letter-head and nothing else, name and address—you assume that he is a real estate agent?

A. If he has a name and profession on it,—attorney at law—I respect that profession and I certainly would have written you.

Q. Answer my question, Mr. Mathison. I say, you assume that if they don't appear there, as attorney at law or some other occupation, that he is a real estate agent?

A. Well, they usually have those kind of letter-heads.

(Testimony of Enoch E. Mathison.)

Q. They do? A. Yes.

Q. Did you ever see a real estate agent yet with a letter-head that didn't express his business on it?

A. Yes, sir.

Q. You have? A. I have.

Q. That's nothing new, then, for real estate agents, but it is something new for lawyers?

A. It certainly is. I never saw a lawyer yet who was ashamed [116] of his profession—who wouldn't put his profession on the letter-head.

Q. Now, then, when is the first time you wrote to the Clerk of the Court?

A. That was the 20th of February, 1919—

Q. Was that the first knowledge you had—

A. (Interrupting.) 1920.

Q. 1920? A. Yes.

Q. Was that the first knowledge you had that suit had been brought?

A. I had heard of it, but not directly.

Q. How did you say you came to write that letter to the Clerk of the court?

A. The Clerk of the court here?

Q. Yes.

A. I wanted to ascertain— My interest was to still protect Tuppela—and see whether or not there was really a suit commenced, and for that reason, when I knew that Tuppela was in Juneau and had retained counsel, I wanted to find out definitely what the status of that case was. That is the reason I wrote.

Q. Well, when you got the Clerk's letter, you

(Testimony of Enoch E. Mathison.)

knew that the case had been lost? A. Yes.

Q. Did you make any effort to try to redeem the situation, such as offering to join or aiding in the appeal?

A. No; after I had seen that the same J. H. Cobb who had written me a letter previously was also an attorney in the case, I relied on it that you did your duty to your client, whom you knew was my client also. [117]

Q. How did I know that he was your client also?

A. How did you know?

Q. Yes. Q. Tuppela showed you the contract.

Q. And you knew that I stated in my letter to you that at that time Tuppela stated to me that that matter had been ended between you, didn't you? A. No, sir.

Q. I had informed you of that fact in my letter, hadn't I? A. No, sir.

Q. How did you know at that time that Tuppela had showed me the contract?

A. Because I knew that Tuppela was honest in that respect.

Q. Oh, that's the way? A. Yes.

Q. You just inferred it, then, from that?

A. Yes.

Q. As a matter of fact, you didn't know whether I had seen it all, did you?

A. I was positive you did, because you wrote me a letter.

The COURT.—Well, now, answer the question.

Q. I say, as a matter of fact, you didn't know in

(Testimony of Enoch E. Mathison.)

February, 1920, that I had ever seen the contract at all, did you? A. As a matter of fact, I did not.

Q. No. And the first time that you did have any knowledge that I knew of the contract, you also knew from my statement that Tuppela had told me that that matter had been ended before he came to Alaska? A. I didn't get that.

Q. I say, the first time you did know positively that I had [118] ever seen the contract, you also knew that Tuppela had stated to me that the contract between you had been ended before he came to Alaska, didn't you? A. No; I did not.

Q. Didn't I tell you that in my letter?

A. No, sir.

Q. In this here?

A. Oh, you mean the letter you wrote in 1920?

Q. The one in which I informed you that I had seen the contract?

A. That was after the case had been adjudicated.

Q. That was the first knowledge you had that I had ever seen the contract, isn't it?

A. Actual knowledge; yes. You didn't tell me even then. Oh, I guess you did.

Q. You guess I did. And that's the first time you ever knew that I had ever seen the contract?

A. As a matter of fact; yes.

Q. Then, why did you tell this jury a moment ago that I knew that Tuppela was also your client?

A. Why did I tell—?

Q. Yes.

(Testimony of Enoch E. Mathison.)

A. Well, Mr. Lepisto told me the other day—

Q. (Interrupting.) Oh, you're putting in Mr. Lepisto's hearsay testimony now.

A. Well, you're asking me that.

Q. I am asking you for testimony; not hearsay. You ought to know—

The COURT.—Well, now; no arguing.

Q. Based upon Mr. Lepisto's statement to you; that's all. [119]

A. And a general understanding of Mr. Tuppela's acts and honesty.

Q. Mr. Tuppela is an honest man, you say?

A. He was. In those respects he was honest.

Q. You did not, however, when you learned that the case had been lost, take any steps to protect Tuppela's interests, did you?

A. No; you—

Q. (Interrupting.) Answer that yes or no?

A. No; I did not. You were retained as his attorney, and it was not my position to do that.

Q. Did you ever engage or associate with you any Alaska attorney in the case?

A. Against the Chichagoff Mining Company?

Q. Yes.

A. No; I did not.

Q. You never. Anything to prevent you from doing that? A. Oh, yes—

Q. (Interrupting.) Prior to the time the suit was brought in May, 1919, fourteen months after your contract, was there anything to prevent you from associating—

(Testimony of Enoch E. Mathison.)

Mr. ROBERTSON.—Just a minute. We object to this line of examination. It's not proper cross-examination. I don't know just what he is driving at, but it seems to me that it ought to be confined either to the issues in the case or to the testimony brought out on direct examination. Now this particular question that he is asking him, I can't see the materiality of. I don't know of any such testimony brought out on direct examination, or how it can have any bearing— [120]

The COURT.—(Interrupting.) Well, it does, to a certain extent. It was brought out on direct examination, the original contract— It was inserted in the original contract that he intended, if necessary, to associate an attorney authorized to practice in the Territory, and it goes to that particular point, whether he did at that time before 1919, associate any attorney or did he intend to, in accordance with that clause of the contract. That was brought out on direct examination.

Mr. ROBERTSON.—That is very true, your Honor, but it also—

The COURT.—Objection overruled.

Q. Was there anything, after the contract was signed and prior to the time that the suit of Tuppela against the Chichagoff Mining Company was filed in this court, about fourteen months, lacking nine days, was there anything to prevent you from associating counsel with you up here?

A. Well, after—

Q. (Interrupting.) Just answer that yes or no.

(Testimony of Enoch E. Mathison.)

A. Was there anything to prevent me?

Q. Was there anything to prevent you; yes.

A. Oh, yes.

Q. What? A. Tuppela's actions himself.

Q. Tuppela's actions in coming to Alaska to look after his case?

A. He didn't comply with my instructions or his part of the contract in getting the information and getting the papers and writing me or coming back and making a report. I could not. You know that yourself. I couldn't employ counsel here and there when I didn't know just when I would bring [121] suit, if suit was necessary.

Q. Had you found out whether a suit was necessary or not?

A. I hadn't advanced to that position. I am not the kind of lawyer that will file a suit whenever a client comes into his office just to get attorney fees.

Q. Do you usually wait fourteen months?

A. I wait for the proper time. When I have both the facts and the law in the case, then is when I take my steps.

Q. Do you always rely upon your clients to look up the facts in a case? A. Principally.

Q. Always? A. Yes, sir.

Q. Uh-huh.

A. If a client can't furnish facts, I can't make him. I don't make facts.

Q. And you never yourself examine it to find out—look up the facts in a case? A. Oh, yes.

Q. Did you do it in this case? A. I did.

(Testimony of Enoch E. Mathison.)

Q. Did you come to Alaska to find out about it?

A. No, sir.

Q. You stayed in Astoria? A. How is that?

Q. I say, you stayed in Astoria?

A. That is where I practice law; yes.

Q. And there is where you were looking up the facts?

A. All that I could get hold of there.

Q. All that you could get hold of there. Well, could you get any facts in Astoria? [122]

A. Yes, sir.

Q. Who from? A. From Mr. Tuppela.

Q. Oh, you couldn't get anything after he came to Alaska to see about his business, could you?

A. After he came here?

Q. Yes.

A. I had gotten all the facts that I thought it was possible to get.

Q. I say, you couldn't get any more facts in Astoria after he left? A. After he left; no.

Q. You couldn't get any more facts—

A. (Interrupting.) All the facts—

Q. (Continuing.) So you sat still?

A. All the facts that it was possible to get—

Q. (Interrupting.) Just answer my question.

A. What is that?

Q. You needn't argue the question.

A. All right; what is it?

Q. You didn't do anything after that towards looking up any facts, after he left for Alaska?

A. Yes; wherever there was a possibility, but,

(Testimony of Enoch E. Mathison.)

of course, there wasn't any chance for me to get any more facts, for the reason that I had already worked a very long time to get what there was to be had over there.

Q. Did you ever hear of the doctrine of laches as a defense in mining cases?

A. Oh, yes; well, not particularly mining cases.

Q. Never heard of it. You didn't know that that defense would apply with great strictness in a mining case? [123]

A. I knew—

Mr. ROBERTSON.—(Interrupting.) I object to that as irrelevant and immaterial. We don't think on a breach of contract suit for damages on a certain contract, he can go into a theory of law to show whether or not one particular attorney might have a less or greater knowledge than some other attorney. In other words, the doctrine of laches in this particular case was enunciated by this Court and overruled by the Circuit Court of Appeals. It was decided by the Circuit Court of Appeals that it wasn't laches—that was in the Appellate Court, in the very case that Mr. Cobb is now speaking of. Now, then, to maintain whether or not this man, Mr. Mathison, happened to know about that doctrine or not, doesn't affect his rights under the contract one way or the other.

Mr. COBB.—No; the Circuit Court of Appeals did not lay that down. What saved the case—

Mr. ROBERTSON.—(Interrupting.) Well, they overruled the case.

(Testimony of Enoch E. Mathison.)

The COURT.—I understand what the Circuit Court of Appeals laid down in the matter. This question goes to the defense of whether, under the contract, the defendant, or the plaintiff rather, exercised due diligence in pursuing the terms of the contract, in this case, and I think the testimony—

Mr. COBB.—How is that?

The COURT.—Being the defendant in the case, I think you are entitled to cross-examine him. You may ask him.

Mr. ROBERTSON.—We except.

Q. You say you hadn't heard of that in mining cases? [124]

A. Well, I had read, yes—mining cases as well as other cases.

Q. You didn't know that it was applied with great strictness in mining cases, did you?

A. Well, not particularly mining cases, but in this particular case—

Q. (Interrupting.) Just answer the question.

A. Sir?

Q. Just answer the question.

A. What is the question.

Q. Did you know it was applied with great strictness in mining cases?

A. It is usually applied; yes.

Q. Did it ever occur to you that such a condition of facts over at Chichagoff might exist in which a delay of even a few months might be fatal to Tuppela's rights, after he got out of the asylum?

A. No.

(Testimony of Enoch E. Mathison.)

Mr. ROBERTSON.—We make the same objection.

Q. That never occurred to you?

A. No; I knew that he had not—I knew that the sale was void.

Q. Now, then, these letters that you have been testifying about, of which you have no copies, written in Finnish you say, to Tuppela, were they?

A. Yes sir.

Q. How did it happen that on July 7, 1920, you wrote to him in English and registered the letter?

A. Because I knew that you were his attorney and that you were directing his actions. Neither you nor he had answered my letters. This time I was going to write a letter and register it—take no chances—have a return card demanded; [125] and it came to you according to the return card, with your handwriting on it—John Tuppela, by J. H. Cobb.

Q. Did you know that for more than a year preceding that, all of Tuppela's mail came to me—I accepted it, and that he didn't go to the postoffice?

A. I believe that you took care of Tuppela's letters, all right.

Q. How is that?

A. I believe that you took care of Tuppela's mail, all right.

Q. Did you know that Tuppela is a man who was so ignorant that he didn't go near a postoffice to get any letters, and that if he got any letters, they would have to come through somebody else?

(Testimony of Enoch E. Mathison.)

A. Oh, I didn't know about that.

Q. You didn't know about that? A. No, sir.

Q. How did you know that I was taking care of his mail? A. Didn't you sign the return card?

Q. That was in 1920. Did you know it before that? A. How is that?

Q. You sent that in my care, didn't you?

A. That I don't recall.

Q. You don't recall?

A. But I don't think so. I wrote to John Tuppela.

Q. But the return card was signed John Tuppela, by me, wasn't it? A. It certainly was.

Q. You knew that Tuppela couldn't read English? A. Yes; but I knew that you could.

Q. Well, then the letter was to me as much as it was to Tuppela, wasn't it? A. Yes; it was. [126]

Q. Well, then, why didn't you send it in my care?

A. Well, you were not a party to the contract.

Q. But you just stated that it was as much to me as it was to Tuppela, didn't you?

A. Well, in this way it was: you were his attorney. Letters that would come to Tuppela with respect to his interests, you would get those. He would come to you.

Q. Naturally.

A. Naturally. Or, if he didn't, you would see that he would. In that way, it was as much to you as it was to him.

Q. Now, then, you received my letter in reply to that, written for Mr. Tuppela, that has been intro-

(Testimony of Enoch E. Mathison.)

duced in evidence here?

A. What, that real estate letter?

Q. Yes. A. Yes.

Q. And you didn't answer that?

A. I answered Tuppela.

Q. Oh, you answered Tuppela.

Mr. ROBERTSON.—Well, now, which letter are you speaking of? There are two or three letters.

Mr. COBB.—The letter in answer to his letter of July 7; my answer through Mr. Tuppela, then.

A. Oh, the one that you answered—

Q. (Interrupting.) I think it is July 20th; some time in July, 1920, I mean.

A. Your letter, in answer to mine which was registered?

Q. Yes. A. No; I did not reply to that.

Q. You didn't answer that? A. No.

Q. Now, then, on July seventh, the case of John Tuppela against [127] the Chichagoff Mining Company was decided by the United States Circuit Court of Appeals?

A. It was somewheres around that date.

Q. The first Monday in July; the first time the court met? A. Yes; I believe so.

Q. Now, you saw a report of the decision published in the papers? A. I did.

Q. That is the information upon which you were demanding your pay? A. Yes, sir.

Q. For the work you had done? A. Yes, sir.

Q. Now, then, when did you bring this suit?

A. I brought this suit—complaint, I guess, was filed—

(Testimony of Enoch E. Mathison.)

Mr. ROBERTSON.—(Interrupting.) Well, the record of the Court is the best evidence on that.

The COURT.—He can answer if he knows?

Q. Well, the complaint was verified on October, in October, 1921, third day of October, 1921.

A. It was in the fall of 1920—

Q. That's fourteen months after you wrote this letter? A. Yes, sir.

Q. You had seen it published in the papers that Tuppela some two or three months before that had gone insane? A. No; I didn't know that.

Q. Didn't know that? A. No, sir.

Q. When you brought this suit, you didn't know that Tuppela was insane? A. No; I did not.

Q. Didn't know it at all? [128]

A. No, sir.

Q. You were suing him for money and didn't know that he was adjudged insane some three months before? A. No, sir.

Q. Why, then, did you plead those facts in your complaint, if you didn't know it?

A. At the time of—

Q. (Interposing.) Of filing this suit.

A. Oh, I knew it then.

Q. That is what I am asking you, and you just denied it.

A. I thought you said before that. Before I had brought any suit I didn't know. The first time that I knew that he had gone insane was when Mr. Manix returned from the investigation, and I asked him if he saw Tuppela and he said, "No."

(Testimony of Enoch E. Mathison.)

Q. Then after he went insane, you brought this suit?

A. If that happens to be the fact; yes.

Q. You stated on yesterday, if I remember rightly, that when Tuppela left down there the last of August or the first of September, he had three hundred dollars? A. No.

The COURT.—No, he said he stated that he said he had \$300.

Q. Oh, he said he had three hundred dollars?

A. He said—I think you objected to it and I didn't finish my question, or answer—he had money coming from a man by the name of Impola—money belonging to him previously in Alaska, and it was \$300; that he was going to pay him that money when the fishing was over.

Q. Well, did he ever tell you whether he paid him or not?

A. No, I haven't seen him since. Impola had given part of that, either that, or some money, previous to that. [129]

Q. What I am getting at is—if I misunderstood you, I want to be corrected on it—did you know that he had three hundred dollars at that time?

A. I don't know whether he had it on his person. As I understood it, he didn't have it but that he would get it after the fishing season was closed and Impola was to—

Q. (Interrupting.) And it was closed then?

A. It was not closed; no.

Q. Well, at the time he left, it was closed?

(Testimony of Enoch E. Mathison.)

A. It was closed; yes; but I didn't see him—I was there then—but it was a few days before, about the 23d or—fourth of August.

Q. You don't know, then, as a matter of fact, whether he had any money or not?

A. Well, yes; he had money.

Q. Now, you say that along the last days of August, you let him have \$25?

A. Well, that was the time.

Q. How is that? A. That was the time.

Q. That he left?

A. That is the time I saw him last.

Q. What did you let him have that money for?

A. He asked for it.

Q. He asked for it?

A. Yes; and I said, "Yes; I can let you have it."

Q. Did you lend him this money simply as a friend?

A. Well, yes; that was loaned in that spirit.

Q. The fact that you had this contract had nothing to do with it at all, did it? [130]

A. I don't think that entered into it.

Q. You don't think it did? A. Yes.

Q. Well, what do you know about that?

A. How is that?

Q. Did you lend him any before the contract was made? A. No, sir.

Q. You lent him some on the day it was made?

A. Yes, sir; he came back that afternoon and asked me if he couldn't have ten dollars, and I had eight dollars, I think it was, in my pocket, and I

(Testimony of Enoch E. Mathison.)

gave it to him.

Q. And he came in on the 18th, just a week later, and got \$8.25 more?

A. Yes; that is noted there.

Q. Did you pay him that in cash?

A. In cash; yes.

Q. How did it happen to be eight dollars and eight and a quarter?

A. I don't just recall now. I remember that he had come in twice.

Q. Do you tell this jury, now, that these advances you made there have nothing to do with your contract whatever? A. No, sir.

Q. Well, do you tell them that now or not?

A. What is the question.

Q. Do you tell the jury that these advances you made had nothing to do with the contract signed—had no relation to the contract whatever?

A. No, he said he would pay that; that he had money in Alaska regardless of the result of the suit.

Q. Uh-huh.

A. That he had money coming and he would be able to pay that. [131]

Q. That is, provided he lost out, he could get then, the proceeds of the guardian sale? Is that it?

A. He told me he had some money coming—

Q. (Interrupting.) Just answer the question. Is that it? A. No.

Q. What other money did he have?

A. I don't recall now, but he said he had money

(Testimony of Enoch E. Mathison.)

coming from the different loans he had made.

Q. Wasn't the understanding between you and old man Tuppela, when these advances were made, to the effect that you should be repaid out of what you were to get from the Chichagoff Mining Company? A. No.

Q. That wasn't the understanding at all?

A. No.

Q. You just lent it on the credit of John Tuppela, independent of your employment? A. Yes.

Q. John Tuppela had credit with you for the sum of \$362.50? A. Yes.

Q. All of this money that you advanced, none of it was for expenses connected with the suit—not a dollar? A. None of it.

Q. This sixty dollars, that was advanced him to come up here to see about the case at the time you both were coming up?

A. Yes; he didn't have any money.

Q. Well, that was part of the expense of carrying out the contract, wasn't it. A. No.

Q. It was to pay John Tuppela's expenses to Alaska, wasn't it, [132] to see about this litigation—you and he?

A. No, he just wanted the money as a loan.

Q. Didn't you testify yesterday that you let him have that at the time you were both coming to Alaska, and you had to cancel your reservation because you found out you couldn't come?

A. Yes.

Q. And wasn't that to pay his expenses up here?

(Testimony of Enoch E. Mathison.)

A. No; I suppose he intended to use it for that, but that is the amount I loaned him.

Q. Didn't you know that that is what it was for?

A. Well, no. Doctor Coe told me that he would get passage, a ticket for him and expense money, to here, but he wanted to borrow this sum.

Recess until 2 P. M. this day, Nov. 9, 1922.

2 o'clock P. M., November 9, 1922.

Court met pursuant to recess.

ENOCH MATHISON (on stand).

Cross-examination (Resumed).

(By Mr. COBB.)

Q. You stated, in your direct examination, I believe, that during the summer of 1918, or a part of the time, you were busy with some cases in the Supreme Court of Oregon or Washington?

A. Both.

Q. What were the names of those cases?

A. One was Matt Hendrickson vs. Sund.

Q. Sund? A. (Spells:) S-u-n-d.

Q. What was that in, which court?

A. In the Supreme Court, State of Washington.

[133]

Q. Were they afterwards decided by the court?

A. Yes, sir.

Q. Do you know whether it was reported?

A. It was reported; yes.

Q. Have you the reference to the report?

A. It was reported in 177 Pac. 808.

Q. Now, how long would it take you to go from Astoria to Olympia? The case was heard at Olym-

(Testimony of Enoch E. Mathison.)

pia, Wash? A. Yes.

Q. How long would that take you?

A. Oh, about three days; two or three days.

Q. That is to go and come back?

A. Yes; about three days.

Q. What was the other case?

A. The other case is Mathison vs. Anderson.

Q. Is that yourself? A. Yes, sir.

Q. In the Supreme Court of Oregon?

A. Washington.

Q. Washington. Where is that reported?

A. State of Washington. That is reported in 174 Pac. 642 and again in 182 Pac. 622.

Q. Was that argued at the same time that the other case was?

A. That was pending then in the Supreme Court.

Q. How is that? A. It was pending then.

Q. I say, did you make two trips up or were they argued at the same time, the same day?

A. I made several trips. There were motions to dismiss and then a motion for rehearing and they *they* recalled the mandate and then finally to dismiss—

Q. (Interrupting.) Was that all the cases you had that summer? [134]

A. In the Supreme Court of the State of Washington?

Q. Yes.

A. That was all that I had in that court.

Q. Well, you said something about a case in the Supreme Court of Oregon? A. Yes.

(Testimony of Enoch E. Mathison.)

Q. In the summer of 1918, that prevented you from coming at that particular time to Alaska.

A. They didn't prevent me, but there were matters that I had to attend to. One was the case of John Woupio—

Q. (Interrupting.) What is the name?

A. (Spells.) W-o-u-p-i-o. Woupio vs. Clatsop County.

Q. Versus what?

A. Clatsop County.

Q. Can you give me the report of that?

A. No, I couldn't give you that.

Q. Any others?

A. That is all that I can recall. I just happened to think of these the other day.

Q. Now, how many times, or how many trips did you make up to Olympia on those two cases of your own and your client's?

A. On my own case, I made quite a number of trips there. It involved a lot of litigation.

Q. Quite a number in both cases?

A. About three, I think, on the other one.

Q. About three on the first one you mentioned—three trips on it? A. I believe so.

Q. Three hearings? A. I believe so.

Q. Three hearings on the Matt Hendrickson case and three on [135] your own case?

A. I don't recall. There were at least three in my case, but the Hendrickson case—

Q. All that summer—all the hearings that summer? A. Mostly that summer and fall.

(Testimony of Enoch E. Mathison.)

Q. You know when you went up?

A. I was there on the hearing of the case on its merits, that was on June 16.

Q. That was the first trip you had to make?

A. No; I had made several trips before that.

Q. Well, did these three cases take up all your time that summer?

A. I had several cases in the Circuit Court.

Q. In the Circuit Court. Did your business in the petit courts and the other courts take up all your time?

A. Then I was on the legal advisory board for the local draft board.

Q. Would that take up all your time, including the time that you put in on the case?

A. How is that?

Q. Would that take up all your time, including the time that you put in on the case?

A. And other phases to attend to; it did. It took more than my time.

Q. Took up more than your time?

A. We were all crowded up here—every attorney—because during the war many of them were in the service.

Q. When did this excessively busy spell begin?

A. It was there all the time that I recall.

Q. All the time from March 11th on? [136]

A. Sir?

Q. All the time from March 11th, on?

A. And prior to that.

Q. And prior to that. And having this business

(Testimony of Enoch E. Mathison.)

on hand, you knew the work that was ahead of you?

A. Yes; I knew that this required very thorough preparation.

Q. So that you had no time to come to Alaska?

A. I didn't know at the time—

Q. (Interrupting.) Well, just answer the question? A. What is it?

Q. You had no time to come to Alaska, you state?

A. No, I don't.

Q. You stated that is one of the reasons you didn't come? A. No; I didn't.

Q. Didn't you? A. No, sir.

Q. Answer the question. You had no time?

A. I said, no, sir.

Q. What is that? A. I said no, sir.

Q. And you knew that in March, the 11th, how busy you were going to be?

A. Well, I was busy all the time.

Q. Now, then, you stated yesterday afternoon, I believe, that you ascertained it took some two months to make the round trip from Portland to Sitka?

A. That is what I figured it would take to come here and make the investigation.

Q. Uh-huh.

A. From the reports that I received from the steamship companies [137] and others that had been here.

Q. Did you ever find out any better? A. Sir?

Q. Did you ever find out any better?

A. Any better?

(Testimony of Enoch E. Mathison.)

A. Yes.

A. Well, I thought that was good information.

Q. Did you ever find out that it wasn't good information? A. No; I didn't.

Q. It wouldn't take you over a few weeks to come up and go back, would it?

A. I haven't found out any otherwise.

Q. How long does it take you to go from Astoria to Seattle? A. You can make that in a day?

Q. Have you found out how long it takes—And you can go back in just a day, can't you?

A. Yes, sir.

Q. Have you found out how long it takes to go from Seattle up here?

A. They say that it is between three and five days; sometimes six.

Q. And you can go back just as quick?

A. I suppose so.

Q. That would be, at the outside, twelve days?

A. You mean from here to Astoria and back?

A. Yes.

A. Well, I suppose between twelve and fifteen days, if you make proper connections.

Q. So you do know, now, don't you, that you were misinformed about its taking two months?

A. How is that?

Q. So you do know now that you were misinformed about its taking two months? [138]

A. To make the trip to Juneau and back to Astoria?

(Testimony of Enoch E. Mathison.)

Q. Yes.

A. Well, that was not my purpose to make the trip to Juneau and right back. I wasn't going to come here just to make the trip.

Q. I know it wasn't your purpose— A. Sir?

Q. I know it wasn't your purpose, but you found out that you could make the round trip in twelve days to two weeks, if you wanted to?

A. I have found out that you could make it in that time, but you couldn't do any investigating or do anything else. You could come as far as Juneau, but I understood, and since know, that Sitka and Chichagoff Island are not in Juneau. You may know better, but that is what I have been—

The COURT.—Never mind. You have made your explanation.

Q. Did you make any inquiry to find out what sort of boat service there was between Juneau and Sitka? A. Yes, sir.

Q. Did you find that there was a boat every week regularly on the run?

A. I found out from the Alaska Steamship Company that there was a boat—

Q. (Interrupting.) Well, just answer the question. A. Sir?

Q. Did you find out that there was a regular boat on the run that made round trips once a week?

A. No, sir.

Q. Did you find out, that in addition to that, some of the larger steamers call at Sitka during the summer months? [139]

(Testimony of Enoch E. Mathison.)

A. I did find out that they stopped there, but they were indefinite.

Q. So from all this you figured it would take two months of your time?

A. I figured it would take two months to make the trip and do the investigating properly, as I wanted to.

Q. So you didn't attempt anything? A. Sir?

Q. So you didn't attempt anything?

A. What do you mean by "attempt"?

Q. You didn't come or attempt to make an investigation? A. Oh, yes, I did.

Q. Did you come?

A. I didn't come, no; but I did attempt. That was your question.

Q. Well, how did you attempt to make any investigation at Sitka if you didn't come?

A. By sending Mr. Tuppela here.

Q. Oh, oh. That was in August or September?

A. Yes, sir.

Q. Prior to that, you didn't do anything?

A. Oh, yes, I did.

Q. What?

A. I investigated as near as, or as much as I could under the circumstances.

Q. I want to know what you did, not as much as you could. A. Well, I investigated—

Q. (Interrupting.) You weren't supposed to do anything very much down there, but what did you do?

A. I investigated Mr. — with Mr. Tuppela all

(Testimony of Enoch E. Mathison.)
that I could.

Q. You talked with Tuppela? [140]

A. Yes, sir.

Q. That was all?

A. That and with people that had been here.

Q. How is that?

A. With some of the people that had been here and had some information regarding his claims.

Q. Were you a particular friend of Mr. Tuppela?

A. No; not any more than just what I have stated.

Q. He was just a client, nothing more?

A. That is all. Of course, I had known him when I was a small boy.

Q. You knew nothing about his financial situation other than what he told you? A. No; I didn't.

Q. And the only motive you had in lending out this money that you say you let him have, was simply to accommodate him, was it?

A. Yes; that is what I would take it for.

Q. The fact that you had this contract with him had no inducing cause or anything? You would have lent it to him if you hadn't had the contract?

A. That never entered in my mind when I gave him the money.

Q. Never entered into it at all? A. No, sir.

Q. Would you have lent it to him if you hadn't had the contract with him?

A. I have loaned to quite a number of people—

Q. (Interrupting.) Well, would you have done it? A. That I don't know.

(Testimony of Enoch E. Mathison.)

Q. Don't you know that you wouldn't?

A. No; I don't. [141]

Q. You don't?

A. There is no reason why I shouldn't have loaned it to him.

Q. Are you in the habit of lending as much as \$362.50 to any man with whom you have no business relations, if they come and ask you for it?

A. Well, I have done it; yes.

Q. Is that your habit? A. Not usual habit; no.

Q. There was no friendship existing between you and you didn't know that the man had a dollar on earth? A. Put that again.

Q. Are you in the habit of lending as much as \$362.50 in one summer to any man that you don't know whether he has got a dollar in the world, and with whom you have no business relations?

A. No; I'm like you are, Mr. Cobb, I believed there was a chance of getting my money back.

Q. How is that?

A. There was a chance of the man being able to pay this money back to me. I'm not throwing any money away any more than you are.

Q. Well, answer the question. I'm not asking you for comparisons. Do you do that?

A. What was the question again?

A. I said, do you lend money to any man who comes along, with whom you have no contractual relations of any kind, no business connections, and who is in the same or similar situation that John Tuppela was in 1918?

(Testimony of Enoch E. Mathison.)

A. Well, if he will put up security, yes; I will loan it to him if I have the money.

Q. That isn't the question. Tuppela didn't put up security, did he? A. No. [142]

The COURT.—You make the question a little more definite, Mr. Cobb.

Mr. COBB.—Well, I think he has answered it now.

Mr. ROBERTSON.—I thought you said he didn't answer it.

Mr. COBB.—Well, he answered it in response to the next question. I think his meaning is plain.

Q. Did Tuppela ever ask you for any money before you had entered into this contract on March 11th? A. No, sir.

Q. And you took no security from him?

A. No, sir.

Q. And the loans had no connection with your employment as attorney? A. No, sir.

Q. You don't know whether you would have lent it if you hadn't been employed, or not?

A. That is problematical.

Q. Problematical? It was no part of the expense of the contemplated litigation, such as taking care of Tuppela until you could institute the suit and get the money? A. No, sir.

Q. And there was no agreement on your part nor talk in negotiating this contract, that you were to furnish the money to take care of Tuppela and for the expenses of the suit? A. Absolutely not.

Q. Absolutely not. Did you contemplate paying

(Testimony of Enoch E. Mathison.)

any part of the expenses yourself?

A. That never entered into the agreement at all.

A. Did you contemplate it? A. No, sir. [143]

Q. Contemplate paying any part of it yourself?

A. No, sir; not Tuppela's expenses. I might have contemplated paying my own fares, and so forth.

Q. The court costs and the necessary expenses of the litigation? A. No, sir.

Q. Didn't contemplate paying that?

A. No, sir.

Q. Contemplated that Tuppela would pay all that?

A. That Tuppela would put it up—all that.

Q. During the time that you knew Tuppela, did you ascertain the extent of his mental capacity?

A. In what—

Q. (Interrupting.) Didn't you find that he was a man of very weak mind

A. No; I found him pretty strong-minded.

Q. Capable of carrying on a sustained conversation or reporting a sustained conversation?

A. Yes, sir; on the subject that he was interested in.

Q. And a man of sufficient mental strength to interview a witness and report what he would testify to? A. Yes; he was able to do that.

Q. Did he appreciate the material importance of testimony in his case?

A. Yes, he did, in so far as his rights pertained to the property.

Q. How is that?

(Testimony of Enoch E. Mathison.)

A. In so far as his rights pertained to the mining property.

Q. He couldn't read or write, except his name.

A. Well, he could read—

Q. Writing? [144] A. How is that?

Q. Could he read English?

A. That I don't know.

Q. You don't?

A. No; I don't know whether I ever tested him on that.

Q. Could he read writing at all?

A. He read and wrote the Finnish language.

Q. Could he read handwriting in Finnish?

A. Why that is my impression now. I don't know whether—

Q. (Interrupting.) Now, Mr. Mathison, as a matter of fact don't you know that he couldn't read writing at all; that he could only read a little Finnish print? A. No; I don't.

Q. You don't know that? A. No, sir.

Q. Never found that out to be true?

A. Excepting my impression now is that he could read and write the Finnish language.

Mr. COBB.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. Mr. Mathison, do you know where Mr. Tuppela expected to get money from to conduct the litigation, if there was any litigation required in this matter?

A. Yes, sir.

Q. From where did he expect to get it?

(Testimony of Enoch E. Mathison.)

A. Mr. August Nikula had promised him to aid in that way.

Q. Aid him where? A. Sir?

Q. Aid him where? [145]

A. In the case of litigation, if that were necessary.

Q. In doing what?

A. Paying expenses and so forth.

Q. Well—

A. (Interrupting.) That was my understanding; get it from his people.

Q. From what people?

A. From the Finnish people over there.

Q. Whereabouts?

A. Astoria, and I believe some of them are in Portland?

Q. Did Mr. Tuppela have any friends in Astoria?

A. Yes; he had.

Q. He did have. Well, now, was your relationship with him anything other than purely business?

A. That's all my relationship with him was.

Q. But you had known him for a good many years? A. Yes; I had known him before.

Q. Then, during this time, do you know whether he was also tendered money from any other sources during this period that you loaned him this \$362?

A. I don't know; he told me—

Q. (Interrupting.) What did he tell you?

A. He did tell me that he received some money from other Finnish people.

Q. Now, then, when he was figuring on coming

(Testimony of Enoch E. Mathison.)

back to Juneau or to Alaska, from where was he going to get transportation and his expense money to come back to Alaska, if you recall?

A. My understanding was that Mr. Nikula and the other people who were interested in him would supply it, if he needed it.

Q. I mean his steamship transportation? [146]

A. Oh, that was from the Sanitarium.

Q. What, if anything, did you have to do with that?

A. I had it postponed, or rather, had the time extended several times.

Q. Time for what extended?

A. The law, I guess, or rule of the Department is that you get your fare from the Government from the sanitarium back to the place where you were committed.

Q. I see.

A. But you must apply for that within six months and this having elapsed, over six months, I went and saw Doctor Coe in Portland.

Q. And did what?

A. Several times and had it extended.

Q. Now, then—I think you have covered that pretty thoroughly—Mr. Cobb asked you if you did anything else besides talk to Tuppela and you said you talked with Tuppela and other people. Now, did you do anything else besides talking to Tuppela, or holding consultations with Tuppela about this matter, or with these other people?

A. I looked—I examined those certified copies of

(Testimony of Enoch E. Mathison.)

the commitment papers as well as the proceedings of the guardian.

Q. Yes.

A. And I satisfied myself, as well as making that investigation of the law in connection with it, that the sale was void.

Q. What, if anything did you do about making an investigation as to the legal remedies that Tuppela had?

A. Well, I decided that if Tuppela had sustained his contention that the best thing to do would be to see the Chichagoff Mining Company and see what settlement could be had—what [147] acceptable settlement could be had. That would have been my first step. If not, then it would be to file suit at the most convenient and proper place. Now, that had not been settled at that time.

Q. Now, what advice did you give Tuppela?

A. I gave those advices.

Q. Now, Mr. Cobb asked you about an agreement, if Tuppela didn't talk to you about a previous agreement that he had with some attorney by the name of Davis, and I believe also with a man by the name of Clark in Portland. Now, what, if anything, did Tuppela tell you about that matter?

A. It is my custom—

Q. (Interrupting.) Well, now—

A. (Interrupting.) When he came to me, I asked him the first thing whether he had taken this matter up with any other attorney?

Q. What did he say? A. He said he had.

(Testimony of Enoch E. Mathison.)

Q. Well, now, then, did he tell you what the attorneys had told him?

A. I asked him—yes; he did.

Q. What did he say they told him?

A. They told him that his case was hopeless; that they couldn't take it.

Q. Now, then, what, if anything, did he ask you, then and there, in regard to your seeing them or not seeing them?

A. He didn't say anything regarding my seeing them.

Q. What, if anything, did you do after this talk about seeing them?

A. I wanted to ascertain from him about whether or not he was under contract with the other attorneys— [148]

Q. (Interrupting.) What did you do?

A. (Continuing.) And he told me that he had signed some papers.

Q. What did you do?

A. And I went then to Portland and saw Mr. Davis. I wanted to see him, but he wasn't in, and I saw Mr. Farrell.

Q. Who was Mr. Farrell?

A. Farrell was his partner.

Q. Did you later see Mr. Davis?

A. Mr. Farrell said he didn't know much about the case.

Q. Did you later see Mr. Davis? A. Yes.

Q. What was the result of that?

A. He said he had investigated the case; had

(Testimony of Enoch E. Mathison.)

written to Alaska and that he had no written agreement with Tuppela.

Q. What, if anything, did he say as to whether or not he had a contract with Tuppela?

A. He said that he didn't have any contract, but he had taken the matter up—under investigation.

Q. That he had taken—

A. (Interrupting.) Yes, and had investigated it.

Q. But that he had no contract at that time?

A. That is what he stated to me.

Q. Well, now, then, did you ascertain in any manner—and, if so, how—as to whether or not this other attorney, Mr. Clark, had any contract with Mr. Tuppela?

A. As I recall, Mr. Davis told me—

Mr. COBB.—(Interrupting.) We object to that. I haven't been objecting to this heretofore, but it's wholly hearsay.

The COURT.—Objection sustained. [149]

A. I did not take it up with Mr. Clark.

The COURT.—Never mind. The objection is sustained.

Q. Now, then, was it after you had ascertained as to whether or not those gentlemen had a contract that you entered into the contract with Mr. Tuppela that is in evidence in this case? A. Sir?

Q. Was it after that, after you had ascertained the status of those gentlemen as to any prior contract with Mr. Tuppela that you entered into the contract in this case, with Mr. Tuppela?

(Testimony of Enoch E. Mathison.)

A. Yes; about two months afterward.

Q. Now, on this question, Mr. Mathison, that Mr. Cobb interrogated you about in that letter of July 7, 1920, wherein you stated to Mr. Tuppela that he had left for parts unknown, just explain what you meant by that?

Mr. COBB.—I object to that. The letter speaks for itself. The witness can't— There is no ambiguity about that.

The COURT.—Objection overruled. You may state.

A. Well, I meant this: that I had written to him and having not heard from him, except simply indirectly—

Q. (Interrupting.) Whereabouts had you written to—whereabouts? A. To Sitka and Juneau.

Q. And you had heard nothing from him?

A. Had not heard from him.

Q. Did you, or did you not, know generally where Mr. Tuppela was going when he left Astoria the latter part of August, 1918?

A. Oh, yes; yes, I knew that.

Q. Whereabouts was he going to?

A. To Juneau, Sitka and to Chichagoff Island.
[150]

Q. Now, then, Mr. Cobb asked you if you ever wrote to either him or Mr. Tuppela after the Clerk of the Court had responded to your letter to him under date of February 20th, in which the Clerk had advised you that a few days prior to the receipt of your letter, that the case had been decided

(Testimony of Enoch E. Mathison.)

in this court against Mr. Tuppela. Do you recall Mr. Cobb's calling your attention to that—asking you about that? A. Yes, I recall that.

Q. Now, did Mr. Cobb or Mr. Tuppela ever write you, either write or in any otherwise communicate with you in which they either requested that you should participate in the recovery, offered that you should participate in the recovery in this suit, if you took part in it, or in which they demanded or asked you to take part under your contract or put up any costs whatsoever?

Mr. COBB.—We object to that. In the first place it is not proper cross-examination and in the next place, there is no issue of that kind. It's utterly irrelevant and immaterial. Neither Tuppela nor his attorneys at that time thought for a moment that this man had any interest in the case.

Mr. ROBERTSON.—Well, of course, that hasn't been proved yet, but Mr. Cobb, if the Court please, asked Mr. Mathison—

Mr. COBB.—(Interposing.) If he offered to do it.

Mr. ROBERTSON.—If he offered to do it. Why shouldn't we in turn have the right to ask Mr. Mathison whether or not they— We put in evidence correspondence showing that Mr. Cobb was written to—that Mr. Cobb wrote to Mr. Mathison, and there is certainly nothing in the evidence, so far, that Mr. Mathison knew who Mr. Cobb was, and yet Mr. Cobb, in those letters or otherwise, made no offer to call him in [151] to participate,

(Testimony of Enoch E. Mathison.)

or call upon him to share in the expenses, It seems to me we have a right to show whether or not Mr. Mathison ever got such a demand or request or offer.

The COURT.—I think that that has all been testified to in his examination in chief. Not proper redirect examination. Mr. Mathison has already testified that he never heard directly or indirectly. That covers the matter. I think that it is not proper cross-examination.

Mr. ROBERTSON.—I take an exception.

The COURT.—(Continuing.) Or redirect examination.

Q. There is one question that may possibly be reiteration. I will ask you at this time, Mr. Mathison, as to whether or not you ever had any reply from Mr. Cobb or from anyone on behalf of Mr. Cobb or Mr. Tuppela, to your letter of February 20th, to Mr. J. H. Cobb, Juneau, Alaska, Plaintiff's Exhibit No. 8, in this case?

Mr. COBB.—He has already testified that he didn't get any answer to it. A. No, sir.

The COURT.—Strike out the answer, until I hear your objection.

Mr. COBB.—How is that.

The COURT.—I told the reporter to strike out the answer until I hear your objection.

Mr. COBB.—I didn't hear the answer, but he has already testified to it once.

The COURT.—Yes. You withdraw your objection?

(Testimony of Enoch E. Mathison.)

Mr. COBB.—Yes; let his answer stand.

Q. Now, Mr. Mathison, Mr. Cobb interrogated you at some length [152] as to the business of your affairs during that time after this contract was entered into. I will ask you to state whether or not there was ever contemplated, in the agreement which you entered into with Mr. Tuppela, anything that required you to come to Alaska?

Mr. COBB.—I object to that as calling for a conclusion of the witness? That is for the jury to say.

The COURT.—Objection sustained.

Mr. ROBERTSON.—We take an exception, if the Court please.

Q. Now, you stated this morning that Mr. Tuppela left no papers with you when he came to Alaska. Did Mr. Tuppela have you at that time—What, if any, papers did Mr. Tuppela have at that time relative to the mining claims as distinguished from the proceedings in Sitka under which the claim was sold or had a guardian appointed for him?

A. He had the commitment papers—

The COURT.—(Interrupting.) He asked you—

Mr. ROBERTSON.—(Interrupting.) Wait a minute.

The COURT.—He asked you what papers other than those commitment papers?

A. I didn't know that he had any other papers.

Q. Was that one of the purposes, if you know, that he was going to Alaska for? A. What—

Mr. COBB.—That has already been testified to.

Mr. ROBERTSON.—Simply ask the right to

(Testimony of Enoch E. Mathison.)

show this; it's a little doubtful question. It may be repetition, but it won't take just a moment.

Mr. COBB.—Go ahead; I withdraw my objection.

The COURT.—You may answer. [153]

A. What papers he came for?

The COURT.—No. What was his purpose in coming to Alaska?

A. His purpose in coming to Alaska was to get certain papers that pertained, tended to show what labor he had performed on these claims.

Q. Those are the papers that you refer now to, the papers that you referred to in your direct examination that he left in a cabin at Sitka?

A. Those are the papers; yes.

Q. Now, so far as the commitment papers are concerned, Mr. Mathison, why didn't he leave the commitment papers with you?

Mr. COBB.—Well, now, we object to that.

Mr. ROBERTSON.—I withdraw it, then.

Q. I will ask you, did you have, in addition to the copy of the commitment papers that he had, did you have a certified copy that you obtained yourself? A. I had a certified copy.

Q. And those are Plaintiff's Exhibit 4 in this case? A. Yes, sir.

Q. Now, about these witnesses at Juneau and Sitka, Mr. Mathison, as I understood it, you didn't mean to—did you, or did you not, mean to say that it would necessarily take two months of actual travel to go from Astoria to Sitka and return, or did you contemplate that it would take two months

(Testimony of Enoch E. Mathison.)

of travel and investigation that you felt it would be necessary for you to make up here?

A. I figured that it would take two months to make the round trip and investigate as to these partners, these parties that were partners of Mr. Tuppela, as the steamship company informed me that—

Mr. COBB.—(Interrupting.) I object to that. That's hearsay. [154]

The COURT.—Yes.

Mr. COBB.—And not responsive to the question.

The COURT.—Yes; not what the steamship company told you.

Recross-examination.

(By Mr. COBB.)

Mr. COBB.—There is one or two questions that I omitted to ask that is not proper recross-examination, and I ask permission to ask them now.

The COURT.—You may ask them.

Q. You stated that when you received my letter in the summer of 1919, you didn't know anything about who I was—whether I was an attorney or not? A. Yes, sir.

Q. Have you any such reference books in your library as Martindale's Legal Directory of the United States? A. I have.

Q. Did you glance at that to see whether my name appeared in it as an attorney? A. No, sir.

Q. Wasn't enough interested?

A. Well, the letter-head threw me off entirely.

Q. The letter-head threw you off entirely.

(Testimony of Enoch E. Mathison.)

A. Yes.

Q. Have you in your office a list of the members of the American Bar Association?

A. I don't think so.

Q. You haven't that. You made no effort to find out, then? A. No.

Q. Who, from references such as that, J. H. Cobb of Juneau, Alaska, was? [155]

A. No; that letter-head certainly threw me off.

Q. Well, just answer the question. You made no effort to find out anything about it? A. No, sir.

Q. And you didn't answer the letter?

A. I answered to Mr. Tuppela.

Q. You didn't answer it to Mr. J. H. Cobb, though? A. No, sir; I didn't.

Q. Now, then, coming back, did you state, did I understand you to state that, when the clerk wrote you that the case had been lost, that you wrote to Mr. Tuppela or to me?

A. I wrote to you at the same time that I wrote to the Clerk.

Q. At the same time? A. Yes, sir.

Q. I misunderstood you. I thought you wrote to me after you received the Clerk's letter?

A. No; I believe not.

Q. You didn't write to anybody after you received that letter? A. After that?

Q. Yes.

A. I expected to hear from you. You were the attorney and I expected to hear from you.

Q. And you didn't get an answer, you say?

(Testimony of Enoch E. Mathison.)

A. I did not.

Mr. COBB.—That's all.

Mr. ROBERTSON.—That's all.

(Whereupon a short recess was taken.)

Mr. ROBERTSON. — (Examining papers.)

Well, now, of course, that isn't really complying with my demand. Counsel has given me a rough statement of what he says is the amount, which, [156] of course, I am not at this time denying. I am not in a position to deny it or refute it, but, of course, what I wanted was the original papers showing the payments made to Mr. Tuppela or to Mr. Cobb as his trustee, so that we could arrive at the value of this property which Mr. Tuppela recovered from the Chichagoff Mining Company.

Mr. COBB.—I told counsel I could get all that if I had the time, and I gave him the result that I have carried forward on my books as trustee, showing, to a cent, in fact, to the half cent, what I have received as trustee for John Tuppela, from that property. I don't know what more he wants unless he wants to go through those reports and verify my statements.

The COURT.—Is the statement sworn to?

Mr. ROBERTSON.—No, sir.

Mr. COBB.—How is that?

The COURT.—I asked if the statement was sworn to.

Mr. COBB.—No; I just took it off there.

Mr. ROBERTSON.—Of course, it puts me in the position of having to put Mr. Cobb on as a

witness and, of course, naturally he is hostile. Of course, I'm adverse counsel.

The COURT.—You may call Mr. Cobb if you so desire, as to the amount.

Mr. ROBERTSON.—Before I call Mr. Cobb I now offer in evidence, if the Court please, a certified copy of the decree on the mandate in case No. 1841—A, John Tuppela against the Chichagoff Mining Company, a corporation, defendant, appellee.

Mr. COBB.—I object to it as irrelevant and immaterial to any issue in the case.

Mr. ROBERTSON.—Well, it seems to me it is a very proper and [157] relevant piece of evidence in this case. It shows that the decree of this court is—formal decree or judgment, and it shows what Mr. Tuppela has recovered and it goes on to show what he hasn't recovered. Now, I don't know how we can have better evidence. Of course, I intended to offer in conjunction with that, the original agreed settlement of accounting, as the agreed settlement of accounting covers one portion of that decree.

Mr. COBB.—The point is, you don't need any evidence on it. Simply encumbering the record. They plead the substance of that decree and we admit it.

The COURT.—The substance of the decree was admitted in the pleadings, so there is no issue on it.

Mr. COBB.—I found the original trust—recorded trustee's deed, which I have produced. I though I put it in the land office. When he is ready

to offer it, I have some objections to it. I am not admitting them for the reason that I don't think they are competent evidence.

The COURT.—I didn't understand you, Mr. Cobb.

Mr. COBB.—I said that these figures, I didn't want the Court to get the impression that I was admitting them in evidence without objection. I have some good and sufficient objections to them, I think.

Mr. ROBERTSON.—Now, if the Court please, I now offer in evidence the agreed settlement of accounting, the original which counsel produced, as your Honor recalls, this morning under agreement and of which I have a copy here—the copy may be substituted in place of the original and the original returned to Mr. Cobb—and I offer that agreed settlement of accounting in evidence. [158]

Mr. COBB.—We object to it for the reason that it is irrelevant and immaterial. This is a settlement brought about by other counsel in a case with which these gentlemen admittedly had not the slightest connection, either as original or associate counsel or in any other way.

The COURT.—I'll hear from you on that.

Mr. ROBERTSON.—It shows if the Court please, that the decree on the mandate provided that an accounting should be taken; that the parties to the case entered into the agreed settlement of accounting under the decree, in which they fixed certain amounts to be taken under the accounting, under the decree. If your Honor glances at the

(Testimony of John R. Winn.)

agreement itself, I think you will see how it becomes material.

The COURT.—And this is in the nature of an accounting to arrive at the question of damages?

Mr. ROBERTSON.—Yes; your Honor, in that case under the decree.

The COURT.—Objection overruled.

(Whereupon said document was received in evidence and marked Plaintiff's Exhibit No. 12.)

Testimony of John R. Winn, for Plaintiff.

JOHN R. WINN, called as a witness on behalf of the plaintiff, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Judge Winn, your name is John R. Winn?

A. Yes, sir.

Q. And you are an attorney at law?

A. Yes, sir.

Q. And you were one of the counsel in the case of Tuppela vs. [159] the Chichagoff Mining Company, tried in this court, in which Mr. John H. Cobb was the other counsel?

A. I was one of the attorneys.

Q. Are you here under a subpoena, Judge Winn?

A. How is that?

Q. Are you here under a subpoena?

A. Yes, sir.

(Testimony of John R. Winn.)

Q. Now, Judge Winn, I will ask you to state whether or not you are familiar with the various matters that were entered into in the Tuppela vs. the Chichagoff Mining Company case, relative to decrees, and so forth?

A. Well, somewhat; yes.

Q. Now, I will ask you to state whether or not shortly after the date of the decree on the mandate in that action, a one-quarter interest in the Over-the-Hill lode mining claim was conveyed to you?

A. Why there was a one-quarter's interest of whatever we won in that case, so far as real mining property was concerned, deeded to me and one-fourth, I think, to Mr. Cobb; but just what the claims consisted of, without refreshing my memory now, I couldn't tell you.

Q. Did that one-quarter interest include the Over-the-Hill, the Porphyry, the Pacific and the Golden West and the Rising Sun?

A. Well, as I said before, Mr. Robertson, I couldn't tell you exactly without looking at the instrument itself. It has been some time ago, but Mr. Cobb and I were to have a one-half interest in whatever claims we established his right to.

Q. That Mr. Tuppela recovered?

A. That we established any right to Mr. Tuppela. We were to have a [160] one-half interest—one-quarter each.

Q. And you did get a one-quarter interest?

A. We got a one-quarter interest.

Q. Did you sell your one-quarter interest to any

(Testimony of John R. Winn.)

one? A. I did dispose of it.

Q. Whom did you sell it to?

A. I disposed of it to Mr. Cobb and Mr. Ooghe, my partner.

Q. At what price did you sell to them, your one-quarter interest—what consideration, money consideration?

A. As I remember it, I think Mr. Cobb—well, I think Mr. Cobb paid me \$16,000 and Mr. Ooghe two. That would make \$18,000 for the quarter interest.

Q. Was there any additional consideration to Mr. Ooghe for past services that was also embraced in that sale?

A. No, I think I paid Mr. Ooghe separate and apart. I had given him some fractional part of the fee I had earned and then I had given Mr. Ooghe, I think, a tenth interest in my share.

Q. That was aside from the \$18,000; is that correct?

A. That is the way I remember it; yes. I think the consideration was, as we figured it to be, \$20,000 for the quarter interest. Q. Yes, sir.

A. And Mr. Ooghe already possessed one-tenth of mine, which would be \$2,000 off of the \$20,000, and that would reduce it to \$18,000, and I think Mr. Cobb paid me \$16,000 out of that and Mr. Ooghe two, if my memory is right.

Q. Was that the value arrived at between you and Mr. Cobb at that time?

A. Well, there was considerable dickering going on and we [161] finally settled on that price.

(Testimony of John R. Winn.)

Cross-examination.

(Mr. COBB.)

Q. You don't know whether you made a good or bad trade, do you?

A. Well, I'm not sorry about it.

Mr. COBB.—I would ask permission to recall the Judge later on a question or two.

Mr. ROBERTSON.—Of course, I don't know the nature of the question.

The COURT.—It is very much out of order, Mr. Cobb.

Mr. COBB.—I know it is.

Mr. ROBERTSON.—I will now read to the jury Plaintiff's Exhibit No. 11:

Plaintiff's Exhibit No. 11.

“In the District Court for the Territory of Alaska,
Division Number One, Juneau.

“No. 1841—A.

“JOHN TUPPELA,

Plaintiff,

vs.

“CHICHAGOFF MINING CO., a Corporation,
Defendant.

“DECREE ON THE MANDATE OF THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

“This cause came to be heard upon the mandate of the Honorable, the United States Circuit Court of Appeals of the Ninth Circuit, which mandate is in words and figures as follows, to wit:

“UNITED STATES OF AMERICA,—ss.

The President of the United States of America,
To the Honorable the Judge of the District
Court of the United States for the District of
Alaska, Division No. 1. GREETING: [162]

“WHEREAS, lately in the District Court of the United States for the District of Alaska, Division No. 1, before you, or some of you, in a case between John Tuppela, plaintiff, and Chichagoff Mining Company, a corporation, defendant, No. 1841—A, a decree was duly filed and entered on the 25th day of February, A. D. 1920, in the words and figures following, to wit:

“ “This cause having been duly heard on the pleadings and evidence adduced at the trial and the Court having rendered its written opinion and made findings of fact and conclusions of law, from which it appears that defendant is entitled to a decree dismissing the bill of complaint herein, with costs, now, therefore,

“ “IT IS ORDERED, ADJUDGED AND DECREED that the bill of complaint herein be, and the same is hereby dismissed with costs.

“ ‘Done in open court this 25th day of February, 1920.

“ ‘ROBERT W. JENNINGS,

“ ‘Judge.’

“which said decree is of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by John Tuppela as appellant against the Chichagoff Mining Company, a corporation, as appellee, agreeably to the act of Congress in such cases made and provided, fully and at large appears:

“AND WHEREAS, on the 18th day of May, in the year of our Lord one thousand nine hundred and twenty, the said cause came on to be heard before the said Circuit Court of Appeals, on the said transcript of the record, and was duly [163] argued and submitted,

“ON CONSIDERATION WHEREOF, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is reversed, with costs in favor of the appellant and against the appellee, with directions to the said District Court to enter a decree adjudging the appellant to be the owner as

against the defendant to the suit of the whole of the Rising Sun lode mining claim, and of an undivided one-half interest in the Over-the-Hill and Pacific Lode Mining claims, and directing a conveyance to him by the defendant to the suit of the legal title to the undivided one-half interest in the said Over-the-Hill claim conveyed to it by the Government patent, and for an accounting of all ore extracted by the defendant from the said Over-the-Hill claim, and for judgment in favor of the appellant for one-half of the value thereof, less one-half of the legitimate expenses of mining, extracting and reducing such ore, and for an accounting of the whole of the value of the ore extracted by the defendant from the said Rising Sun claim, and for judgment therefor, less the legitimate expenses of mining, extracting and reducing such last-mentioned ore, and for costs of suit.

“It is further ordered, adjudged and decreed by this Court that the appellant recover against the appellee for his costs herein expended, and have execution therefor (July 6, 1920).

“YOU, THEREFORE, ARE HEREBY COMMANDED THAT SUCH execution and further proceedings be had in the said cause in accordance with the opinion and decree of this Court, and [164] as according to right and justice and the laws of the United States ought to be had, the said decree of the said District Court notwithstanding.

“WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States,

the 16th day of November, in the year of our Lord one thousand nine hundred and twenty.

(Signed) "F. D. MONCKTON,

"Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

"By Paul P. O'Brien, (Signed)

"Deputy Clerk.

"Amount of costs allowed and taxed in favor of the appellant and against the appellee, as per annexed bill of items, taxed in detail, \$1281.75.

"It is, therefore, considered by the Court and it is ordered, adjudged, and decreed, that the said decree of this Court made and entered herein on February 2, 1919, be and the same is hereby annulled and set aside.

"It is further ordered and decreed that the plaintiff, John Tuppela, is the owner, as against the defendant, the Chichagoff Mining Company, a corporation, of an undivided one-half interest in and to those two certain lode mining claims situated at or near Chichagoff Island, Alaska, known as and called the Over-the-Hill, and Pacific Lode Claims, and of the whole of that certain lode mining claim situated at or near Chichagoff on Klag Bay, on the west side of said Chichagoff Island, Alaska, and adjoining the Over-the-Hill claim on the west end thereof, known as and called the Rising Sun lode claim.

"It is further ordered, adjudged and decreed, that the [165] defendant, the Chichagoff Mining Company, a corporation, holds the title by patent from the United States, dated January 3, 1919, to

the said Over-the-Hill claim to the extent of an undivided half thereof, in trust for the plaintiff, John Tuppela, and it is hereby ordered and directed to execute a good and sufficient conveyance thereof to the plaintiff.

“It is further ordered, adjudged and decreed, that the defendant, the Chichagoff Mining Co., render to the plaintiff an account of all ores extracted from the said Over-the Hill claim, and pay to him one-half the value thereof, less one-half the legitimate expenses of mining, extracting and reducing such ores; also an accounting for all the ores extracted from the Rising Sun Lode claim, and pay to him the whole of the value thereof, less the legitimate expenses of mining, extracting and reducing such ore.

“It is further ordered and adjudged that the plaintiff, John Tuppela, do have and receive of and from the defendant, the Chichagoff Mining Co., the sum of Twelve Hundred and Eighty One and 75/100 (\$1281.75) dollars, costs of, and upon said mandate, and all costs and disbursements of this Court to be taxed by the Clerk, for all of which execution may issue.

“It appearing to the Court from the record and files herein, that the conveyance herein ordered to be made has been duly executed by the defendant, and that the parties have taken the accounting ordered, and the defendant has paid to the plaintiff the moneys due thereon, this decree is adjudged

satisfied, except only as to the costs aforesaid.
[166]

“Dated this first day of December, 1920.

“ROBERT W. JENNINGS,

“Judge.”

“O. K.—H. L. FAULKNER,

“Attorney for Defendant.

“Entered Court Journal No. Q, pages 140–41–42.

“Entered Court Journal No. D, pages 2, 3, 4.

“Filed in the District Court, District of Alaska,
First Division. December 1, 1920. By J. W. Bell,
Clerk. By ———, Deputy.”

Mr. ROBERTSON.—Defendant’s Exhibit No. 12
is as follows:

The COURT.—Plaintiff’s Exhibit No. 12.

Mr. ROBERTSON.—Plaintiff’s Exhibit No. 12;
yes.

Mr. COBB.—We make the same objection to this
—irrelevant and immaterial for any purpose.

Mr. ROBERTSON.—Well, that has already been
ruled on. You have that objection in the record.

Mr. COBB.—Not to this, but to the other.

The COURT.—You may read it.

Mr. COBB.—Note an exception.

Mr. ROBERTSON.—(Reads:)

Plaintiff's Exhibit No. 12.

“In the District Court for the District of Alaska,
Division No. One, at Juneau.

“No. 1841—A.

“JOHN TUPPELA,

Plaintiff,

vs.

“CHICHAGOFF MINING COMPANY, a Corpo-
ration,

Defendant. [167]

“AGREED SETTLEMENT OF ACCOUNTING.

“This agreement made by and between John Tuppela, plaintiff, and the Chichagoff Mining Company, defendant, Witnesseth:

“The parties hereto have taken the accounting ordered in the decree herein, and have agreed upon the sum due thereunder as Three Hundred Thousand (\$300,000.00) Dollars.

“It is agreed that the defendant shall pay the costs as adjudged in said decree, and the plaintiff agrees not to tax costs above or in excess of \$2500.00 in both courts.

“The defendant has paid this day to the plaintiff the sum of One Hundred and Fifth Thousand (\$150,000.00) Dollars, the receipt of which is hereby acknowledged, and agrees to pay the balance of One Hundred and Fifth Thousand Dollars (\$150,000.00) into the Bank of California at Seat-

tle, Washington, to be credited as follows: to John R. Winn Thirty-Seven Thousand Five Hundred (\$37,500.00) Dollars; to John H. Cobb one Hundred Twelve Thousand Five Hundred (\$112,500.00) Dollars on January 2d, 1921, and also the costs to be taxed in the decree.

“Dated this November 24, A. D. 1920.

“JOHN TUPPELA,

“J. H. COBB,

“Trustee for John Tuppela.

“CHICHAGOFF MINING CO.,

“By W. R. RUST,

President.

“H. L. FAULKNER,

“Attorney for Defendant.

“JNO. R. WINN,

“J. H. COBB,

“Attorneys for Plaintiff.” [168]

Mr. ROBERTSON.—I now offer in evidence the certified copy of the motion for an injunction, in case No. 1841—A, John Tuppela vs. the Chichagoff Mining Company, wherein certain facts are stated relative to the value of the property in question.

Mr. COBB.—I don't know what the gentleman's offering them for. It is wholly irrelevant and immaterial to any issue in this case.

The COURT.—Let me look at it.

Mr. ROBERTSON.—The second page is what we want to put in. Before the Court rules I want to say a word or two as to my theory for the admission of the affidavit.

The COURT.—I'll hear from you, Mr. Robertson:

Mr. ROBERTSON.—Well, of course, we have now put in evidence, if the Court please, the decree on the mandate and also an agreed settlement between the parties. Now, it is possible that that is sufficient, but we have in the evidence an affidavit made by counsel for Tuppela and also by one of the defendants in this case, in which he states that the value of this is so much—the value of the recovery which they were seeking. Now, of course, in this case, it is very evident that the plaintiff necessarily labors under considerable difficulty to prove what the value of the recovery was; that is to say, it lies more in the breast of the defendants and within their knowledge to say what the value of this property was that they recovered than it does in ours. The best way we can get at that is to show the admissions that they made at the time when they were not seeking to defend themselves, but when they were seeking to recover. Now that statement, so made on information and belief in that case—it was after the trial, at the conclusion [169] of the trial that the affiant says in that case that there was so much. Now, I don't mean to say that that figure is binding, but it seems to me that it ought to go to the jury, for the jury to take that into consideration—that at one time they said that the value of this was so much; that is, their proportionate share would be one-half of the amount that they stated therein.

The COURT.—The exhibit was established by the evidence in that case?

Mr. COBB.—It only amounts to an opinion of an attorney in the case.

Mr. ROBERTSON.—That may be but—

Mr. COBB.—(Interrupting.) He is not an expert on values and not a mining man.

The COURT.—Well, you are one of the defendants in this case, aren't you?

Mr. COBB.—Only in a representative capacity, and wrongfully and illegally a party at that, as I will show the Court at the proper time. I have got no business to be a party to this suit. Tuppela got \$300,000; that is, there was that much paid in the settlement of the case, and he recovered his property. Now, there is a very easy way of getting at it, as near as you can get at it, and they have shown that a quarter interest in that property sold for \$20,000, which would make Tuppela's half interest in the property \$40,000. Now, I don't see how they can take my opinion based upon testimony that was adduced at the time of the trial.

The COURT.—I think I'll sustain the objection.

Mr. ROBERTSON.—We will ask to have it marked, if the Court [170] please, until we can properly reserve an exception.

The COURT.—You may.

(Whereupon said document was marked Plaintiff's Exhibit No. 3 for Identification.)

Mr. ROBERTSON.—I now offer in evidence a certified copy of the assignment of errors in the

case of John Tuppela vs. the Chichagoff Mining Company, a corporation, plaintiff, in which the defendant in this case (in that case the plaintiff) admits, as we claim, the value of this property. Now, of course, if counsel objects to that on the ground that—I haven't offered all the assignments of error. They are very voluminous, and I simply had the clerk take one of them, assuming that counsel wouldn't raise any objection on that particular point.

Mr. COBB.—They have an assignment of error there in which we ask for certain finding from Judge Jennings, and the Judge refused it and we assigned that refusal as error. We asked for a judgment for a certain sum—"find that he was entitled to judgment for a certain sum." Now, they have offered that to show the value of the property because we asked for it.

Mr. ROBERTSON.—You certainly didn't admit that it was less than what you—

The COURT.—(Interrupting.) I'll sustain the objection for that reason; that it is wholly an opinion.

Mr. COBB.—Amounting to an opinion.

Mr. ROBERTSON.—I will ask that that be marked for identification and reserve an exception to its rejection.

(Whereupon document was marked Plaintiff's Exhibit No. 4 for Identification.)

Mr. ROBERTSON.—I now offer in evidence a certified copy of [171] an affidavit of John Tup-

(Testimony of John R. Winn.)

pela, made in case No. 2026—A, Henry Lepisto, Plaintiff, vs. J. H. Cobb, Trustee, and Chichagoff Mining Company, Defendants.

Mr. COBB.—I object to it as wholly irrelevant and immaterial. What is the purpose of it?

Q. (Mr. ROBERTSON.) Certain admissions made by plaintiff John Tuppela, or the defendant John Tuppela in that case, which are relevant in this case. Affidavit made before his own counsel in the case.

Mr. COBB.—Yes; but the facts set up in it are wholly irrelevant and immaterial. Oh, I think I'll withdraw the objection and let them read it. There are some things in there I would like to go to the jury myself.

The COURT.—Very well, if you withdraw the objection.

(Whereupon said affidavit was received in evidence and marked Plaintiff's Exhibit No. 13.)

Mr. ROBERTSON.—Certified copy. I will not read the Clerk's certificate. (Reads:)

Plaintiff's Exhibit No. 13.

“United States of America,

“Territory of Alaska,—ss.

“John Tuppela, being first duly sworn on oath, deposes and says: I am one of the defendants in the suit of Henry Lepisto vs. John Tuppela et al. I was also the plaintiff in the case of John Tuppela vs. Chichagoff Mining Company referred to in the

complaint in said first-mentioned cause. I have heard read the complaint in the cause of Lepisto vs. Tuppela, et al. The allegations therein that I promised and agreed to pay Henry Lepisto one-half of the money or property I might recover in the case of Tuppela vs. Chichagoff Mining Company is absolutely untrue. I never agreed to give him anything for any services he assumed to render to me nor did he ever ask me for anything. I met Lepisto first, as I [172] recall it, in the month of December, 1918. He was never recommended to me by anyone, but introduced himself as a countryman. He seemed to have learned that I had a claim against the Chichagoff Mining Company, and at his instance I went with him to the office of Judge J. R. Winn in Juneau and about the early part of January Judge Winn agreed to represent me in said suit as my counsel. Judge Winn also agreed to provide for my room and board while in Juneau, which he did. I never before heard that Lepisto had anything to do with my room and board.

“About March 13, 1919, I went to the Pioneers’ Home in Sitka, Alaska, and remained there until the first day of May, 1919, when I returned to Juneau, being sent for by J. H. Cobb, who I subsequently learned had been called into the case in my behalf by Judge Winn. It is true that in May, 1919, about the time of my return to Juneau, Henry Lepisto, without any suggestion from me, but as I understood it, at the request of Judge Winn, attempted to interpret for me in stating my case to

Mr. Cobb, but he was utterly unable to do so because of his ignorance of the English language. Such interpretation was thought necessary at the time, not because I could not express myself in English, but because of an impediment in my speech due to the loss of my front teeth and my inability to enunciate distinctly. During all this time Lepisto expressed a friendly interest in my case and seemed desirous of seeing me win, but he never rendered me the slightest assistance of any kind so far as I am aware, except that he did volunteer and was permitted to go to Chichagoff in July, 1919, as a chain carrier when the mine was surveyed under order of the Court. But as I understood [173] from my attorney, Mr. Cobb, Lepisto asked to go, as he was not working at the time, and wanted the trip.

“JOHN TUPPELA.”

“Subscribed and sworn to before me this the 29th day of December, 1920.

“[Notarial Seal]

J. H. COBB,

“Notary Public in and for Alaska.

“My commission expires June 8, 1923.”

Mr. ROBERTSON.—I now offer in evidence this counter-affidavit of John Tuppela, Plaintiff's Exhibit No. 1, which counsel objected to this morning. Your name is on the back of it.

Mr. COBB.—I object to it as wholly irrelevant and immaterial to any issue in this case.

The COURT.—What is the purpose of this.

Mr. ROBERTSON.—Why the purpose of that

is to show that—We have contended in this case, and Mr. Mathison has so testified, that he advised Mr. Tuppela not to accept any money which Mr. Mills might offer him or to enter into any arrangement for releasing or discharging Mr. Mills until he had first consulted with him. Now, of course, we realize that some of these matters are simply circumstantial, but here is an affidavit made at a time long before this case was brought in which, I would call your attention to the significant language used in the very last sentence particularly, which, it seems to us, is one of the circumstances that should go to the jury.

The COURT.—You object?

Mr. COBB.—Yes; I object to it. (Examines affidavit.) There is nothing in here—

The COURT.—(Interrupting.) Well, I don't care about any statement. Do you object?

Mr. COBB.—Yes; I object to it. It is irrelevant and immaterial. [174]

The COURT.—I sustain the objection.

Mr. ROBERTSON.—We'll ask, if the Court please, to have it marked for identification and reserve an exception to it.

The COURT.—You may take your exception.

(Whereupon said affidavit was marked Plaintiff's Exhibit No. 1 for Identification.)

Mr. ROBERTSON.—We now offer in evidence, if the Court please, a certified copy of the reply to the amended answer in case No. 1841—A, John Tuppela, plaintiff vs. the Chichagoff Mining Com-

pany, a corporation, defendant, made by the defendant John Tuppela before the defendant J. H. Cobb.

Mr. COBB.—I object to that as irrelevant and immaterial; an allegation in the pleadings, sworn to upon information and belief, necessarily so, being but an estimate of a value that would be due on an accounting. And besides, it is not the best evidence. It's been adjudicated what that amount was and they have got that in the record—because we at one time overestimated what the court allowed us. It's not evidence that the first amount is correct—irrelevant and immaterial for any purpose.

Mr. ROBERTSON.—I don't recall that it was made on information and belief. Perhaps it was. I don't recall that it was made on information and belief.

The COURT.—I think the statement of the defendant John Tuppela in his answer in that case—I'll allow it. I'll overrule the objection and allow it to be introduced in evidence for what it is worth.

(Whereupon said certified copy of reply in case mentioned was received in evidence and marked Plaintiff's Exhibit No. 14.)

Mr. ROBERTSON.—Is it satisfactory to waive the reading of that at this time, Mr. Cobb? [175]

Mr. COBB.—Yes.

Mr. ROBERTSON.—It can be read before the jury.

Mr. MANNIX.—You admit that you made practically the same agreement?

Mr. COBB.—No, I don't. I didn't make any such

agreement as that.

Mr. ROBERTSON.—We'll offer it in evidence, if the Court please.

Mr. COBB.—How is that?

Mr. ROBERTSON.—We offer it in evidence. Any objection?

Mr. COBB.—No.

The COURT.—This is the original?

Mr. COBB.—Yes; that is the original. I would like to keep that.

Mr. ROBERTSON.—We'll ask that the clerk make a certified copy of it.

Mr. COBB.—I don't care about having it certified. Just make a copy.

(Thereafter, a certified copy of a contract and agreement between John Tuppela and John R. Winn and J. H. Cobb, dated May 9, 1919, was received and marked Plaintiff's Exhibit No. 15.)

Mr. ROBERTSON.—In the pleadings, Mr. Cobb, my recollection is that the trust agreement was made on August 26, 1920. (Counsel hands agreement to Mr. Robertson.)

Mr. ROBERTSON.—I now offer to read in evidence, if the Court please, the deposition of—

Mr. COBB.—(Interrupting.) Has the contract between Tuppela and Winn and myself been received in evidence?

Mr. ROBERTSON.—Yes; received and marked in evidence, and I asked the clerk to make a copy.

I will now read the deposition of Lauri Moilanen.

(Deposition of Lauri Moilanen.)

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB as Trustee for
John Tuppela, and GROVER C. WINN as
Guardian of the Person of John Tuppela,
Defendants.

State of Massachusetts,
County of Worcester,—ss

Deposition of Lauri Moilanen, for Plaintiff.

Be IT REMEMBERED That on this 14th day of June, 1922, before me, a Justice of the Peace in and for the state of Massachusetts, County of Worcester, personally appeared, in pursuance to the annexed commission, Lauri Moilanen, a witness on behalf of the plaintiff Enoch E. Mathison in the above-entitled action, and that thereupon, after said witness was by me first duly sworn on oath to tell the truth, the whole truth and nothing but the truth, I did propound to said witness the interrogatories hereunto attached and thereupon the said witness made answer to said interrogatories as hereinafter set forth, to wit:

(Deposition of Lauri Moilanen.)

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB, as Trustee for
John Tuppela and GROVER C. WINN as
Guardian of the Person of John Tuppela,
Defendants.

DIRECT INTERROGATORIES PROPOUNDED
TO LAURI MOILANEN. [177]

Q. 1. Please state your name, residence and occupation.

A. 1. My name is Lauri Moilanen. I am living at 18 Saari Parkway, Fitchburg, Mass. My occupation is that of editor.

Q. 2. State where you were located on or about March 11, 1918.

A. 2. I was in Astoria, Oregon.

Q. 3. Please state whether or not you were acquainted with, or know the defendant John Tuppela.

A. 3. Yes, I have seen him two or three times.

Q. 4. Please state whether or not you saw said John Tuppela at Astoria, Oregon, on or about March 11, 1918.

A. 4. Yes.

(Deposition of Lauri Moilanen.)

Q. 5. Please state whether or not on or about said March 11, 1918, you were called upon to act as a witness or interpreter in any manner pertaining to a written instrument wherein said Tuppela and the above-named plaintiff, Enoch E. Mathison, were interested.

A. 5. Yes, I was.

Q. 6. In connection with the last preceding interrogatory, the notary public will hand you a written instrument and you are asked to state whether or not that is the written instrument to which you refer, and if so, please attach hereto and make it a part of your deposition.

A. 6. Yes, that seems to be the same document. I have done it.

Q. 7. Referring to said instrument, please state whether or not you were one of the witnesses thereto, and, if so, whether or not your signature appears thereon.

A. 7. Yes, I was, and my signature appears thereon.

Q. 8. In connection with said instrument and your acting as witness thereto, you are requested to state how you happened to act as such witness. [178]

A. 8. All I recall about that is that I was in the office of Mr. Mathison on that day, some time in the afternoon as I recall it, and Mr. Mathison asked me to be a witness to a certain agreement that he had made with a person who was introduced to me as John Tuppela.

Q. 9. In connection with the execution of said in-

(Deposition of Lauri Moilanen.)

strument, please state whether or not the same was signed by John Tuppela and Enoch E. Mathison in your presence.

A. 9. Yes.

Q. 10. In connection with the execution of said instrument, you are asked to state the persons present at the time that the instrument was so signed and all the circumstances attendant therewith.

A. 10. I was present, Mr. Tuppela was present, Mr. Mathison was present in the same room. I do not remember exactly whether Mr. Barrett was in the same room or in an adjoining room just at the moment when Mr. Tuppela signed the instrument. There was some discussion about the misfortunes that had befallen Mr. Tuppela in Alaska. As I remember it, he explained that he had located valuable mining properties in Alaska as a prospector and certain interests had conspired to take those properties away from him; that he had been hounded in his cabin during nights and that finally he was arrested as an insane; that he was held in some asylum in Alaska for a while and then taken to an insane asylum at Salem, Oregon; that one Mr. August Nikula secured his release from the asylum at Salem; that Mr. Tuppela had learned that his properties or his interests in the mining properties, had been passed upon at court [179] in Alaska and sold for a trifling sum; and that it was his intention and desire to get the properties back; that he had little or no money at the time he was released from the asylum at Salem, Oregon.

(Deposition of Lauri Moilanen.)

Q. 11. In connection with the execution of said instrument, you are requested to state, as near as you recollect, the conversation, if any, had between said John Tuppela and Enoch E. Mathison at that time, and in what, if any, language said conversation was had.

A. 11. Mr. Tuppela's part of the conversation is stated substantially in the preceding answer. The conversation was carried on in the Finnish language.

Q. 12. Please state whether or not you speak, read and write the Finnish language, and, if so, over what period of time you have been able to speak, read and write it.

Q. 12. The Finnish language is my native language and I read and write it.

Q. 13. Please state whether or not you spoke, read and wrote the Finnish language at the time of the execution of said contract on or about March 11, 1918.

A. 13. Yes, I did.

Q. 14. Please state, if you know, whether or not said John Tuppela understood the Finnish and English language on or about March 11, 1918, and at the time of the execution of the said contract.

A. 14. Mr. Tuppela spoke Finnish, but I do not remember having received any information regarding his ability to read or understand English.

Q. 15. Please state whether or not said contract was explained to said John Tuppela before he placed his signature thereon [180] and, if so, in what language or languages it was explained to

(Deposition of Lauri Moilanen.)

him, and by whom.

A. 15. As I remember it, I explained the contract to him in the Finnish language.

Q. 16. Please state what, if anything, said John Tuppela did or said at said time to indicate that he did or did not understand the terms and conditions of said contract. A. 16. He did nothing.

Q. 17. Please state everything that you now recall that was done at said time to explain the terms or conditions of said contract at the time of the execution thereof, to said John Tuppela.

A. 17. As I remember it, I read, or interpreted the document in Finnish.

Q. 18. Please state what, if anything, was done by you, E. E. Mathison, J. J. Barrett, or anyone else to conceal from said Tuppela the terms of said contract, or their true meaning.

A. 18. I do not remember anything of such nature having taken place.

Q. 19. Are you personally acquainted with Enoch E. Mathison, the other party to said written instrument? A. 19. Yes, I know him.

Q. 20. How long have you known him?

A. 20. Since 1916.

Q. 21. Please state what, if anything, that said John Tuppela either did or said at the time of the execution of the writing witnessed by you, which would tend to show that said John Tuppela was satisfied or dissatisfied with the terms of said written instrument. [181]

A. 21. I do not recall his having said anything

(Deposition of Lauri Moilanen.)

that he is either satisfied or dissatisfied with the document or instrument.

Cross-interrogatories.

Q. 1. If, in answer to the direct interrogatory, you have stated that you explained the instrument referred to to John Tuppela in the Finnish language, now state, if you fully explained to him that the said instrument made no provision for the payment of any expenses of the contemplated suit by Enoch E. Mathison.

Mr. MANNIX.—I object to cross-interrogatory No. 1 and the question contained therein for the reason that it is irrelevant and immaterial; not bearing on any issue raised by the pleadings and not proper cross-examination.

Mr. COBB.—Well, the objection is not well taken, and in the next place, it is made too late. There was no objection made at the time. Mr. Mannix appeared.

The COURT.—Was any objection made at the cross-examination?

Mr. COBB.—Until they got them down there at Astoria. What we claim is a vital omission that renders the whole thing nugatory, unless it was cured by actual performance; and it wasn't.

Mr. ROBERTSON.—Well, I am not able to say.

The COURT.—The objection will be overruled. He may answer.

A. 1. I explained all there was to the document, no more.

(Deposition of Lauri Moilanen.)

Q. 2. Is it not a fact that Enoch E. Mathison, as well as yourself, knew at that time that John Tupela had been recently discharged from an asylum for the insane and was utterly penniless? [182]

By JOSEPH MANNIX, of Attorneys for Plaintiff.—I object to cross-interrogatory No. 2 and the question contained therein for the reason that it is irrelevant and immaterial, not bearing on any issue raised by the pleadings and not proper cross-examination.

Mr. COBB.—Well, that's in the same condition as the others. It is not well taken.

Mr. MANNIX.—Does the Court wish me to repeat—

The COURT.—I'll overrule the objection.

A. 2. Yes.

Q. 3. In the conversation to which you have testified at the time of the execution of said instrument, what was said in regard to who was to advance the necessary moneys to bring and prosecute the suit for Tuppela which was then contemplated.

By JOSEPH MANNIX, of Attorneys for Plaintiff.—I object to cross-interrogatory No. 3 and the question contained therein for the reason that it is irrelevant and immaterial, not bearing on any issue raised by the pleadings and not proper cross-examination.

Mr. COBB.—Just asked for a continuation of the conversation—the same kind of situation. Objection is not well taken.

The COURT.—Well, objection overruled.

(Deposition of Lauri Moilanen.)

(Question three repeated.)

A. 3. I understood that Mr. Mathison was to take care of the suit.

Q. 4. Have you discussed your answer to the direct and cross-interrogatories with anyone since the questions were propounded to you? If so, with who? [183]

A. 4. No, except that Mr. Mathison wrote me inquiring whether I remember that I had been a witness to the instrument in question, and I answered him, yes.

LAURI MOILANEN.

Subscribed and sworn to before me this 14th day of June, 1922.

JOHN G. AMALA,

Justice of the Peace, State of Massachusetts, County of Worcester, Residing at Fitchburg.

State of Massachusetts,
County of Worcester,—ss.

CERTIFICATE.

I, John G. Amala, Justice of the Peace in and for the State of Massachusetts, County of Worcester, residing in Fitchburg, do hereby certify that the witness Lauri Moilanen named in the foregoing deposition, before testifying in said cause, was by me sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken pursuant to the commission issued out of the District Court for the District of Alaska,

(Deposition of Lauri Moilanen.)

Division No. 1, at Juneau, in that certain action entitled "No. 2115—A, Enoch E. Mathison, plaintiff, versus John Tuppela et al., defendants," which said commission is hereunto attached and is herewith returned; that said deposition was taken by me in the city and State aforesaid on the 14th day of June, 1922, between the hours of ten o'clock A. M. and four o'clock P. M. thereof, and that the interrogatories hereunto attached were then and there propounded by me to said witness who thereupon made answer thereto which said answers were thereupon reduced to writing by Aina M. Pera, a qualified and disinterested person, and when completed, said answers were carefully read by said witness after they had been so reduced to writing and thereupon, [184] after they had been by him corrected, were by him subscribed in my presence.

Witness my hand and official seal this 14th day of June, 1922.

JOHN G. AMALA,

Justice of the Peace for the State of Massachusetts,
County of Worcester, Residing in Fitchburg.

My commission expires Nov. 7, 1924.

Mr. ROBERTSON.—I want that deposition in evidence, and reserve an exception to those objections overruled on cross-examination.

The COURT.—You may reserve your exceptions to the overruling of the objections.

Mr. ROBERTSON.—I will now read the deposition of J. J. BARRETT:

Deposition of J. J. Barrett, for Plaintiff.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,

Plaintiff,

vs.

JOHN TUPPELA, J. H. COBB as Trustee for
John Tuppela, and GROVER C. WINN, as
Guardian of the Person of John Tuppela,
Defendants.

DEPOSITION OF J. J. BARRETT.

State of Oregon,
County of Clatsop,—ss.

BE IT REMEMBERED That on this fifth day of June, 1922, before me, Clerk of the Circuit Court in and for the State of Oregon, County of Clatsop, personally appeared, in pursuance to the annexed [185] commission, J. J. Barrett, a witness on behalf of the plaintiff Enoch E. Mathison in the above-entitled action, and that thereupon, after said witness was by me first duly sworn on oath to tell the truth, the whole truth and nothing but the truth, I did propound to said witness the interrogatories hereunto attached and thereupon the said witness made answer to said interrogatories as hereinafter set forth, to wit:

(Deposition of J. J. Barrett.)

Direct Interrogatories Propounded to J. J.
BARRETT.

Q. 1. Please state your name, residence and occupation, and for how long engaged therein.

A. 1. J. J. Barrett, Astoria, Oregon, practicing attorney. Have practiced in Oregon since June, 1910.

Q. 2. State what, if any, official position you held in Clatsop County, State of Oregon, on or about March 11, 1918?

A. 2. None, except Notary Public for the State of Oregon.

Q. 3. State whether or not you are acquainted with or know the above-named defendant, John Tuppela?

A. 3. Yes; I am acquainted with the defendant John Tuppela.

Q. 4. State whether or not you saw John Tuppela in Astoria, Oregon on or about March 11, 1918?

A. 4. I did.

Q. 5. State whether or not on or about March 11, 1918, you had any transaction with said John Tuppela relative to taking his acknowledgment to a written instrument in which Enoch E. Mathison was one of the parties, and, if so, when and where?

A. 5. I did, on March 11, 1918, at Astoria, Clatsop County, State of Oregon, take the acknowledgment of said John Tuppela and Enoch E. Mathison, to such an instrument.

Q. 6. Referring to your answer to the preceding

(Deposition of J. J. Barrett.)

interrogatory, you are requested to attach hereto a copy of said instrument and to mark it "Exhibit 1" and make it a part hereof, and also identify said original written instrument by making "Plaintiff's Exhibit #1 for Identification," signing your name under it, and then have the notary public sign under that and affix his official seal opposite his name, so that the original may be identified when it is brought into court. Please state whether you have done so?

A. 6. I have done so. [186]

Q. 7. Referring to said written instrument, you are requested to state whether or not you were one of the witnesses to the signature of the parties thereof, and, if so, whether your signature is on said instrument as one of said witnesses.

A. 7. I was, and my signature is on said instrument as one of said witnesses.

Q. 8. In connection with said instrument, you are also requested to state what, if any, official function you performed in connection with the execution of said instrument.

A. 8. As notary public in and for the State of Oregon, residing in Clatsop County, Oregon.

Q. 9. In connection with said instrument, please state, if you know, who, if anybody, signed said instrument, and who was present when it was signed.

A. 9. John Tuppela signed said instrument as party of the first part thereto, and Enoch E. Mathison signed said instrument as second party thereto, and Lauri Moilanen signed said instrument with

(Deposition of J. J. Barrett.)

myself as attesting witnesses, and all of said signatures were made in my presence, and such signing parties were all the persons present at the time of the execution of said instrument.

Q. 10. In connection with said instrument, please state what, if any, acknowledgment was made by anyone of the execution of said instrument, and, if acknowledged, before whom and by whom?

A. 10. Said acknowledgment was acknowledged before me as a notary public of the State of Oregon by said John Tuppela and Enoch E. Mathison, and that I thereupon attached my certificate of acknowledgment and affixed my seal thereto, and signed such certificate as a notary public at the bottom of Plaintiff's Exhibit 1, for Identification.

Q. 11. In connection with the execution of said instrument, please state to the best of your recollection the persons present and the circumstances attending the execution of said instrument.

A. 11. The persons present were John Tuppela, Enoch E. Mathison, Lauri Moilanen and myself. As is my invariable rule when taking an acknowledgment of that kind, I asked the said parties, John Tuppela and Enoch E. Mathison, who signed the same, if they knew and understood the contents of said Plaintiff's Exhibit 1, for identification, and whether they executed the same freely and voluntarily and for the uses and purposes therein mentioned and received an answer from each in the affirmative.

Q. 12. Please state what, if anything, was done at

(Deposition of J. J. Barrett.)

the time of the execution of said instrument relative to explaining the contents thereof to said Tuppela? [187]

A. 12. The said John Tuppela had said plaintiff's exhibit 1 for identification, interpreted to him in the Finnish language by said Lauri Moilanen, according to my understanding. While I know very little of the Finnish language, I knew enough at that time to know that said Lauri Moilanen was speaking to Tuppela in the Finnish language, with said plaintiff's exhibit 1, for identification, in his hands, and discussing the contents thereof with said John Tuppela, apparently.

Q. 13. Please state whether or not at the time of the execution of said instrument any person acted as interpreter to or for said John Tuppela, and, if so, what, if anything, was done by said interpreter in the way of interpreting said instrument to said Tuppela in any language other than the English language?

A. 13. I have just stated, Lauri Moilanen acted as interpreter for said Tuppela, and said Lauri Moilanen addressing said Tuppela in the Finnish language, apparently interpreting and explaining to said Tuppela the plaintiff's exhibit 1 for identification, a true copy of which I have attached to this deposition and marked exhibit 1.

Q. 14. If you have stated that said instrument was interpreted in some language other than the English language to said John Tuppela, please state who acted as such interpreter, and into what lan-

(Deposition of J. J. Barrett.)

guage, if you know, he interpreted said instrument to said John Tuppela?

A. 14. Lauri Moilanen acted as interpreter, as stated above, using the Finnish language.

Q. 15. Please state what, if anything, said John Tuppela, did at the time of the execution of said instrument to indicate that he did or did not understand said instrument; describe fully the manner in which he so indicated or expressed his understanding or lack of understanding of the instrument?

A. 15. I asked him the direct question whether he understood the contents of the document and he seemed to be not entirely sure of his ground, and looked towards Lauri Moilanen, who addressed said Tuppela in the Finnish language, apparently explaining the contents, and I asked said Moilanen whether said Tuppela understood the contents of Plaintiff's Exhibit 1, for Identification, and whether he acknowledged the same freely and voluntarily and for the uses and purposes therein mentioned, and said Moilanen answered in the affirmative for said Tuppela. Said Tuppela appeared to be satisfied with the document.

Q. 16. Are you acquainted with the above-named plaintiff Enoch E. Mathison? A. 16. I am.

Q. 17. State whether or not said Enoch E. Mathison is one of the parties to said instrument above referred to, and if so, whether or not he signed and acknowledged it? [188]

A 17. He is one of the parties, and did sign and acknowledge said instrument.

(Deposition of J. J. Barrett.)

Q. 18. Please state, if you know, where said Mathison resides, and what his occupation or business is?

A. 18. He resides at Astoria, Clatsop County, State of Oregon, and he is a practicing attorney.

Q. 19. State, if you know, how long, if at all, said Mathison has resided in Astoria, Oregon?

A. 19. To my knowledge, six years, two and a half months.

Q. 20. State, if you know, the length of time, if at all, said Mathison has practiced law in said city.

A. 20. All during the years of my said acquaintance with him.

Q. 21. At the time of the execution of said contract between Enoch E. Mathison and John Tuppela, where were your offices located with reference to the law offices of Enoch E. Mathison?

A. 21. Enoch E. Mathison maintained an office adjoining mine and we had a common reception-room.

Q. 22. State what, if any, occasion you had—

Mr. COBB.—(Interrupting.) Wait a minute, I object to that. They have elected now—that was competent under the first cause of action, but they have elected to stand on the second, and that testimony, I take it, for services that he performed, doesn't include any issue now in the case. And also to the following questions, as it is repetition, and I shall object to questions No. 22 and the answer to it; No. 23, 24—no, not 24—Nos. 22, 23, 27, 28, 29, 30. That testimony might be admissible as to the

(Deposition of J. J. Barrett.)

value of services, but in this kind of case it is not admissible. It is irrelevant and immaterial.

The COURT.—That is a very questionable proposition. The courts are divided on that. Of course, this thing is simply *quantum meruit*.

Mr. COBB.—But this other testimony is not admissible. [189]

The COURT.—Well, the courts contend it is *quantum meruit*.

Mr. COBB.—How is that?

The COURT.—That the amount of damages for services performed, other courts hold that is based, the measure of damages is based upon the contract, less such services as he would have performed if the contract wasn't invalidated by the other party, to carry out the contract and such expenses, if he has performed any services under the contract, that will have to be taken into consideration as part of the damages, because it resolves itself practically into a question for services he has performed. That is, according to some courts. Now, it is a close question and I am inclined to overrule your objection at the present time.

Mr. COBB.—Well, I note an exception. I don't think it will be material.

(Reading of deposition by Mr. Robertson resumed.)

Q. 22. State what, if any, occasion you had to know the nature and character of the service performed by Enoch E. Mathison in connection with

(Deposition of J. J. Barrett.)

and in carrying out the terms of the instrument in question?

A. 22. Enoch E. Mathison discussed with me at different times the services he was performing for said Tuppela, and I know of my own knowledge that said Tuppela called at his office a large number of times during the period between March 1, 1918, to along the latter part of the summer or about September, 1918.

Q. 23. State, if you know, what, if any, work and services said Enoch E. Mathison performed pursuant to the terms of the contract in question and over what, if any, period of time said services extended?

A. 23. In answer to this question I have stated as fully as I could give it in my answer to the question immediately preceding this one, except that I did observe Enoch E. Mathison examining the decisions and looking up the law involved in the matter covered by said plaintiff's exhibit 1.

Q. 24. Please state what, if anything, was done in connection [190] with the execution of said contract, *with* by said Mathison or any other party to conceal or hide from said Tuppela any terms or conditions of said written instrument above referred to, or the true meaning thereof?

A. 24. Nothing to my knowledge was done whatsoever, either by said Mathison or any other party to conceal or hide from said Tuppela any terms or conditions of said written instrument above referred to, or the true meaning thereof.

Q. 25. State whether or not you are an attorney,

(Deposition of J. J. Barrett.)

and, if so, how long have you been an attorney?

A. 25. I am an attorney and was admitted to the bar in the State of Virginia in November, 1909, and have practiced in the State of Oregon since June, 1910.

Q. 26. State the date of your admission to the bar, and how long have you practiced at Astoria, Oregon?

A. 26. I have answered this question in the preceding question, except that I might say that I have practiced in the City of Astoria, State of Oregon, eight years and two and a half months.

Mr. COBB.—Now, I object to 27 and 28, asking him there as to his reputation for truth and veracity.

The COURT.—I'll hear from the other side on that proposition.

Mr. ROBERTSON.—We won't offer those two questions—27 and 28.

Mr. MANNIX.—We withdraw those questions.

(Reading of deposition resumed by Mr. ROBERTSON.)

Q. 29. Do you know the reputation of said Enoch E. Mathison in the City of Astoria, as to his ability and standing in the legal profession?

Mr. COBB.—I object to that.

The COURT.—I will overrule the objection to that.

Mr. COBB.—Note an exception.

A. 29. Yes.

Q. 30. If so, state what that reputation is.

(Deposition of J. J. Barrett.)

A. 30. Good.

Mr. COBB.—My objection, with, of course, the exception, goes to the three. [191]

The COURT.—To the three; yes.

A. 30. Good.

Q. 31. Are you and John J. Barrett described in the commission to take your deposition one and the same person.

A. 31. I am the same person as John J. Barrett referred to in the said commission.

Cross-interrogatories.

Q. 1. If, in answer to direct interrogatory, you have stated that the instrument referred to was explained to John Tuppela in some language other than English, state whether you understood that language or not?

A. 1. I understood it enough to know when a person was using the Finnish language.

Q. 2. Did you know of your own knowledge that the person assuming to explain said instrument to Tuppela did correctly explain it?

A. 2. I knew Mr. Moilanen, and trusted him to properly interpret it, and was satisfied that he did so.

Q. 3. Is it not a fact known to Enoch E. Mathison at the time said instrument was executed that John Tuppela had been recently discharged from asylum for the insane and was utterly penniless?

By JOSEPH MANNIX, of Attorneys for Plaintiff.—I object to this question No. 3 because it calls for evidence which is incompetent, irrelevant and

(Deposition of J. J. Barrett.)

immaterial; because it is hearsay, because it is not proper cross-examination; and not bearing on any issue raised by the pleadings in this case.

The COURT.—I'll hear from you on that.

Mr. COBB.—I don't care anything about it. He says he doesn't know.

The COURT.—Objection sustained.

A. 3. I don't know.

Q. 4. If, in response to direct interrogatory No. 15, you stated that Tuppela indicated or expressed his understanding of the instrument he was executing, now state whether or not you know that Tuppela did understand it as a matter of fact. [192]

A. 4. Of course, I do not know absolutely that Tuppela did understand it. While he could speak the English language fairly well, he seemed to want to be sure of his ground to the extent that he preferred an interpreter.

Q. 5. If, in answer to direct interrogatories, you have stated that you know the reputation of Enoch E. Mathison as to ability and standing in the legal profession, state whether or not, in all your acquaintance with him you have known him to earn as much as \$300,000 in any one year? If you have known him to ever earn and receive \$150,000 for six months' work?

By JOSEPH MANNIX, of attorneys for Plaintiff.—I object to this question No. 5 because it calls for evidence which is incompetent, irrelevant and immaterial; because it is not proper cross-examina-

(Deposition of J. J. Barrett.)

tion, and not bearing on any issue raised by the pleadings in this case.

Mr. ROBERTSON.—That— The answer to that question is, “I don’t know.”

The COURT.—You waive your objection.

Mr. MANNIX.—We waive it. He answered it that he doesn’t know.

Q. 6. Did Enoch E. Mathison ever bring the suit for John Tuppela under the contract contained in the instrument to which you have testified?

A. 6 I do not know.

Q. 7. Did he ever come to Alaska for the purpose of carrying out said contract?

A. 7. I do not know.

J. J. BARRETT.

Subscribed and sworn to before me this fifth day of June, 1922.

J. C. CLINTON,

Clerk of Circuit Court, State of Oregon, for Clatsop County.

State of Oregon,
County of Clatsop,—ss.

I, J. C. Clinton, Clerk of the Circuit Court of the State of Oregon for the County of Clatsop, residing at Astoria, do hereby certify that the above-described deposition was taken by [193] me personally at my office in the City of Astoria, in the County of Clatsop, State of Oregon, on the 5th day of June, 1922, between the hours of 2:30 P. M. and

3:30 P. M. on said date, pursuant to the directions to me made in the attached commission from the Honorable Thomas M. Reed, Judge of the District Court for the District of Alaska, Division Number One at Juneau, in that certain action entitled No. 2115—A, Enoch E. Mathison, plaintiff, vs. John Tup-pela, et al., defendants; that all of said interrogatories and cross-interrogatories attached hereto were addressed orally to the witness J. J. Barrett, and the answers of said witness were taken down in writing in my presence and at my direction by a stenographer named Pearl Gimre, a party disinterested in said cause; that subsequently said interrogatories and cross-interrogatories, and the answers thereto as given by said witness, were typewritten out by said Pearl Gimre; thereupon the witness J. J. Barrett carefully read all of said interrogatories and cross-interrogatories and made such corrections as the witness saw proper; and thereupon the witness being satisfied with the foregoing interrogatories, cross-interrogatories and his answers thereto, said witness J. J. Barrett in my presence signed the same in the manner and form as the same appear attached hereto. That said J. J. Barrett, witness herein, before examination by me herein, was by me sworn to testify to the truth, the whole truth and nothing but the truth, relative to said cause; and that the foregoing proceedings were all had in my presence at my direction, under my supervision and pursuant to the commands to me addressed in the attached commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of my office, this fifth day of June, 1922.

[Seal]

J. C. CLINTON,

Clerk of Circuit Court of State of Oregon, for Clatsop County.

Mr. ROBERTSON.—I would like to offer the trust agreement in evidence and have the clerk make a certified copy of it and return it to Mr. Cobb.

Mr. COBB.—I object to it as irrelevant and immaterial.

Mr. ROBERTSON.—You plead it.

The COURT.—It may be received for identification and a copy made.

Mr. ROBERTSON.—At this time I offer the original trust agreement, with the right to substitute a certified copy, and return the original to Mr. Cobb. [194]

The COURT.—Subject to your objection as to its relevancy?

Mr. COBB.—Yes, sir.

The COURT.—Well, it may be admitted.

(Whereupon said document was received in evidence and marked Plaintiff's Exhibit No. 16.)

Adjourned until Friday, November 10, 1922, at 10 o'clock, A. M.

Friday, November 10, 1922.

Court met pursuant to adjournment at ten o'clock.

Mr. ROBERTSON.—Will you stipulate, Mr. Cobb, that the suit of Tuppela *versus* the Chichagoff Mining Company, No. 1841—A, was instituted on May 10, 1919?

(Testimony of James Wickersham.)

Mr. COBB.—May 10th or 8th; I don't know.

Mr. ROBERTSON.—Tenth is the date.

Mr. COBB.—Yes; that may be admitted as a fact in the case.

Mr. ROBERTSON.—Plaintiff rests. [195]

And thereupon the defendants, to maintain the issues on their part, introduced the following evidence, to wit:

Testimony of James Wickersham, for Defendants.

JAMES WICKERSHAM, called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By J. H. COBB.)

Q. State your name?

A. James Wickersham.

Q. Where do you reside?

A. At present in Juneau.

Q. How long have you resided in Alaska?

A. Something over twenty-two years.

Q. State what official position you held up here?

A. Well, for eight years I was District Judge.

Q. For how long?

A. For about eight years.

Q. And you were delegate to Congress for twelve years?

A. Some twelve years, delegate to Congress.

Q. You are a practicing attorney? A. Yes.

(Testimony of James Wickersham.)

Q. And had been an attorney for a good many years before you went on the bench? A. Yes.

Q. Judge, assuming that a contract of employment was entered into between an attorney and client in which the attorney undertakes, or contracts, to bring suit to recover mining claims in the possession of a third party claiming them, and who may be spending money in developing the property; assuming further that this claim to the property is all in [196] the world that the client has, how soon, in the exercise of ordinary skill, care and dispatch, should that suit be started?

Mr. ROBERTSON.—Now, wait a minute. We object to that question, if the Court please; first, that it is not founded on evidence that has yet been produced in this case—at least two facts that have been proved. It is a hypothetical question upon which there must be evidence in the case, first, upon which the question should be laid; further, that the question is incompetent, irrelevant and immaterial and that there is no issue in the case which would warrant calling for the conclusion of the witness as to within what time any action should be started under such proceedings, or such contract, and, of course, it further invades the province of the jury, if that question goes to the jury, as to whether or not Mr. Mathison was, or was not, negligent in instituting suit. It is a question for the jury to decide, not a question for witnesses on the witness stand to decide.

The COURT.—In every contract of employment

(Testimony of James Wickersham.)

between an attorney and client, there is an applied condition in the contract that the attorney will proceed with the matters entrusted to his care with reasonable diligence, dispatch and skill. Now, if that point is made an issue in this case, that the plaintiff did not proceed with his contract with reasonable dispatch—as to that point, I will suggest that the question be read again to see whether all the hypothetical matters in the question, pertinent to this case, are stated in the hypothetical question.

(Question repeated by the reporter.) [197]

Mr. MANNIX.—If the Court please, I wish to call attention to one hypothetical statement which is not warranted by the evidence that has been produced in this case, and that is that this particular client was without any money in the world, because there is testimony that at that time he had something like \$300, and for the further reason that his hypothetical question does not take into consideration other evidence as to conditions which existed at the time of the entering into of the contract between the plaintiff and the defendant in this case, and the conditions that obtained subsequent to the entering into of the contract. In other words the hypothetical question does not comprehend all the conditions necessary in this case before this witness could give an answer on a matter that should go to the jury.

Mr. COBB.—The testimony of the plaintiff—one of the witnesses here, or the plaintiff himself testified that he understood Tuppela was to get

(Testimony of James Wickersham.)

\$300 that some fisherman had owed him when he could make that money fishing, or something to that effect, and he understood that he got that or would get it in the August following. Another witness for the plaintiff, by deposition, testified that at the time that the contract was made, the plaintiff knew that John Tuppela was absolutely penniless. That is one of the questions objected to. Now, as to the conditions obtaining, I stated them all. The condition of the parties has nothing to do with it.

The COURT.—I'll overrule the objection. You may answer.

Mr. COBB.—Of course, if they have anything in mind, they can wait until the cross-examination. [198]

Mr. ROBERTSON.—We feel that also the question should embody the proposition that there is evidence in the case to show the client was coming to Alaska to obtain and furnish—

The COURT.—(Interrupting.) Yes, I understand that, but I think that can be brought out on cross-examination. You may answer.

A. If the parties were in the Territory and in the neighborhood of where the suit is to be brought, I think a suit like that ought to be brought within thirty days.

Q. Assuming that they were in the state of Oregon at the time the contract was made, contemplating a suit in Alaska, in the exercise of ordinary skill and dispatch, how soon should it be brought

(Testimony of James Wickersham.)

then? A. Within ninety days.

Q. Is there any particular reason why there should be more dispatch, more haste, in filing a suit of that kind than an ordinary suit?

Mr. ROBERTSON.—Now, if the Court please, we object to that as calling for a conclusion of the witness purely. Judge Wickersham may give one opinion, I might think different, you might think another way and the jury think another.

The COURT.—Well, this witness is put on as an expert.

(Question repeated by the reporter.)

A. Yes; indeed.

Mr. ROBERTSON.—Exception.

The COURT.—Objection overruled.

Q. State what those reasons are?

Mr. ROBERTSON.—We make the same objection to that, if the Court please. [199]

A. Well, the reasons are that mining property is a peculiar sort of property. A mining claim that may be without value to-day, may to-morrow, with a little work on it, become very valuable, and the rule is that the parties who intend to bring suit to recover mining property of that nature should do so promptly, and especially when the other party is in possession and at work.

Mr. ROBERTSON.—We move to strike out that last. There is nothing to show that there were other parties in possession and at work.

The COURT.—Motion denied.

(Testimony of James Wickersham.)

Q. What is likely to result from a failure to act promptly in such a case?

Mr. ROBERTSON.—I make the same objection to that question—calling for the conclusion of the witness, simply. No man can answer that.

The COURT.—Objection overruled.

A. There is always a chance, at least, that the parties who are in possession will strike valuable property and then the rule of laches, the rule of negligence of stale demand and so forth, comes in in equity and is liable to give the man's client a great deal of trouble and probably, or possibly at least, bar him from recovery.

Q. Simply upon the ground of delay?

A. Simply upon the ground of delay.

Q. Do you know of a case in which that rule has been applied to even less than three months' delay?

Mr. ROBERTSON.—We make the same objection to that, if the Court please.

The COURT.—Objection sustained. [200]

Cross-examination.

(By Mr. ROBERTSON.)

Q. Judge, if the parties are in the Territory, you think it would be gross negligence if this suit wasn't instituted within thirty days—is that what I understood you to say?

A. No; I don't say that. I said that is a reasonable time within which to do it and that it ought to be done within thirty days.

Q. Ought to be done within thirty days?

(Testimony of James Wickersham.)

A. Yes; ordinarily.

Q. Now, there may be circumstances where even a great deal more time than thirty days could elapse and you wouldn't feel that the attorney had committed negligence, would you?

A. Every case stands upon the facts in that case; yes.

Mr. ROBERTSON.—That's all.

Mr. COBB.—That's all.

Testimony of John Rustgard, for Defendants.

JOHN RUSTGARD, called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. State your name. A. John Rustgard.

Q. You reside in Juneau? A. I do.

Q. At present Attorney General of the Territory?

A. Yes, sir.

Q. And practicing law, of course? A. Yes, sir.

Q. How long, Mr. Rustgard, have you practiced law in Alaska? [201]

A. Well, I came to Alaska a little better than twenty-two years ago, but I didn't start practicing law until I had been here two or three years.

Q. How is that?

A. I didn't commence practicing law, to speak of,

(Testimony of John Rustgard.)

until I had been here three years or so. Oh, I have practiced, in all, twenty years in the Territory.

Q. And you were mining part of the time at Nome? A. Yes.

Q. Practiced law at Nome and also in this division? A. Yes, sir.

Q. You have had mining cases, many of them?

A. Yes; I have had some.

Q. Mr. Rustgard, assuming a contract made between attorney and client, in which the attorney contracts to bring suit to recover mining claims in the possession of a third party who may be developing them, how soon, in the exercise of reasonable skill, care and dispatch, should that suit be instituted?

Mr. ROBERTSON.—Now, we object to that as incompetent, irrelevant and immaterial; no proper foundation laid; not being properly laid upon the facts in this case so far adduced.

The COURT.—Objection overruled. He may answer.

A. As soon as practically possible.

Q. Is there any reason known to you, or known to attorneys generally, general practice, why there should be as little delay as reasonably possible in bringing that kind of a suit?

Mr. ROBERTSON.—We make the same objection. [202]

The COURT.—I'll sustain the objection to that question, if I understand it.

(Testimony of John Rustgard.)

Mr. COBB.—I didn't hear the objection.

The COURT.—The objection was that it was incompetent, irrelevant and immaterial.

Mr. COBB.—I think, perhaps, considering the form of the question, the Court is right. It wasn't exactly as I wanted to phrase it.

Q. Is there any reason known to you—I'll limit it to that—is there any reason why that sort of suit should be brought as early as is reasonably possible?

Mr. ROBERTSON.—Now, I object to that as incompetent, irrelevant and immaterial. No proper foundation laid at this time for the witness' testifying to it.

Mr. MANNIX.—And for the further reason that there is nothing to show what kind or particular suit is meant—no facts at all brought to the attention of this witness which would bring to his mind the kind of suit.

Mr. COBB.—I'm referring to the lawsuit—

The COURT.—(Interrupting.) 'Objection overruled as to the nature of the action and the character of the property.

Mr. COBB.—I'm referring, of course, to the sort of suit referred to in the preceding interrogatory.

A. Well, if I understand it, that first interrogatory referred to a suit for an interest in property which was in process of development.

Q. Yes.

A. There is a reason, yes, why such suits should

(Testimony of John Rustgard.)

be brought with all possible speed, and it is this: that the other party, the defendant, who is presumably developing the property, is entitled to have the title settled before he [203] expends money on it, and the plaintiff should be required to show his hand before it is ascertained, by the money spent by the other fellow, whether or not the property is worth fighting for.

Q. And if there was a delay under such circumstances, what is likely to happen?

Mr. ROBERTSON.—We object to that as irrelevant, immaterial and incompetent and calling for a conclusion of the witness.

The COURT.—Objection overruled. He may answer, if he knows what is likely to happen.

A. The word “likely,” that gives a phase to that question which makes it difficult to answer.

Q. What may possibly happen? What kind of defense?

Mr. ROBERTSON.—The same objection to that. They’re leading an expert witness.

The COURT.—Objection sustained, because the question doesn’t refer to any contingency.

Mr. COBB.—How is that?

The COURT.—The objection is sustained because the question doesn’t refer to any contingency or as to what might happen, what might cause—

Q. Assuming a controversy over mining claims and an unreasonable delay in the plaintiff’s filing suit and the property in the possession of the third party, what possible injury, culpable injury, might

(Testimony of John Rustgard.)

result to the client from the delay in instituting suit?

A. We object to that as incompetent, irrelevant and immaterial; no proper foundation laid in this case for such a hypothetical question.

The COURT.—You may answer. Objection overruled. [204]

A. Why, if there is a delay in bringing such suit, the money spent by the man in possession, the defendant, upon the development of the property, would accrue to the interests of the plaintiff, if the defendant lost the property. In other words, the defendant would not himself benefit by the development of the property if he lost the suit and the development progressed prior to the commencement of the action and before question of title was raised.

Q. In that sort of situation would the doctrine of laches apply against the plaintiff to bar his right or title?

Mr. ROBERTSON.—We object to that as calling for a conclusion of the witness entirely.

Mr. COBB.—That is what he is being examined on.

Mr. ROBERTSON.—And also very leading.

The COURT.—Objection overruled.

A. Why, yes.

Q. Now, you say that that kind of a suit mentioned in the preceding interrogatory should be brought as soon as possible. What would you say would be a reasonable time in which it should be brought?

Mr. ROBERTSON.—Now, I object to that as too

(Testimony of Henry Roden.)

indefinite.

The COURT.—Objection sustained.

Mr. COBB.—On the ground that it is too indefinite?

The COURT.—Yes; doesn't cover the whole proposition and matters in issue in this case.

Mr. COBB.—Very well. I'll try to put it in such a way as to cover it all.

The COURT.—You have already called his attention to what would be a reasonable time—what would be a reasonable time was the first question.
[205]

Mr. ROBERTSON.—Yes, sir; and he has already answered.

Mr. COBB.—He said as soon as possible.

Mr. ROBERTSON.—As soon as practically possible.

Mr. COBB.—Well, with that answer, I'll just rest.

Testimony of Henry Roden, for Defendants.

HENRY RODEN, called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. State your name.

A. Henry Roden.

Q. You are an attorney at law? A. Yes, sir.

(Testimony of Henry Roden.)

Q. How long have you been practicing, Mr. Roden? A. Sixteen years.

Q. In Alaska? A. Yes, sir.

Q. Mr. Roden, assuming that a contract is entered into between a client and an attorney in which the attorney undertakes to bring and prosecute a suit to recover mining claims in the possession of a third party who may be developing them—how soon, in the exercise of ordinary skill, care and dispatch should that suit be instituted?

Mr. MANNIX.—We object to that. Just a minute; we object to this question for the reason that the attorney is assuming a contract in this case which, in the nature of the same, calls for the institution of legal proceedings. This particular contract is such that the plaintiff in this case, in carrying out the terms thereof, could have fully performed the conditions of that contract without ever going into a [206] a court of law. In other words, he could have performed the contract by simply settling the case outside of the courts. Those are facts which are not assumed in the hypothetical question, and a further reason is that this hypothetical question does not cover all the material parts or bits of evidence in this case, bearing upon the carrying out of the terms of the contract by the plaintiff.

Mr. COBB.—The contract does provide, of course, for a fee in the event of settlement. The trouble about this objection that they have made is that there is no proof that any settlement was ever made or any attempt to settle it, so that it left it depend-

(Testimony of Henry Roden.)

ing wholly upon his undertaking to bring suit. Not only didn't they institute suit, but they never settled, never attempted to settle it—no negotiations for a settlement for fourteen months.

The COURT.—Objection overruled.

A. If the property is being developed, I think great dispatch should be practiced and the suit should be brought just as soon as all the circumstances should permit.

Mr. ROBERTSON.—What is the last part of your answer?

A. As soon as the circumstances will permit.

Q. That it should be brought as soon as possible?

A. Yes, sir.

Q. Well, what do you mean by "as soon as possible"—what length of time; that is, that the attorney should have it prepared and get the suit to court?

Mr. ROBERTSON.—Just a minute. I object to that, because there is no evidence here as to what kind of case he is preparing. It may be a little case for the recovery of a small interest in a claim that wouldn't take a week to prepare; [207] and it may be a case of such a nature that it would take six months to prepare. You probably have had such a case and I have worked on that kind of a case myself; so that that kind of question to this witness is absolutely unfounded on any facts in this case.

(Question repeated by the court reporter at request of Court.)

Mr. COBB.—The sort of case referred to in the

(Testimony of Henry Roden.)

preceding interrogatory.

A. Why, not to exceed thirty days.

Q. How is that?

A. Not to exceed thirty days, in my opinion.

Q. What, if any reason exists for the exercise of special dispatch in getting that kind of a suit started?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

The COURT.—He may answer.

A. The rule that a party must not sleep upon his rights applied with particular force in a case of this kind. In other words, a party must not stand by and watch another man spend his money and his efforts, and then try to secure relief in the courts after that party succeeds and had gambled on the outcome of the development.

Cross-examination.

(By Mr. ROBERTSON.)

Q. If all the parties were in the Territory of Alaska, how many days, do you think such a suit should be brought in?

A. Well, if all the parties weren't in the Territory—

Q. (Interrupting.) No, if all of them are in the Territory.

A. Oh, yes, in the Territory. I think a suit should be brought in not less than thirty days. As a matter of fact, I think a suit should be brought—well,

(Testimony of Henry Roden.)

speaking from my experience, [208] I think it should be brought immediately?

Q. What do you call immediately?

A. Within three or four days.

Q. Within three or four days from what time?

A. From the time that the client puts the facts before his attorney.

Q. From the time that you get all the facts from your client and know exactly how you are going to win your case, isn't that the point?

A. Yes; you would want to know the facts.

Q. You don't institute your suit, Mr. Roden, until you know that you got your facts together upon which you were going to substantiate your case?

A. No; I don't.

Q. And if it should happen to take more than thirty days—if it should happen to take three months in order to get those facts, you would take that time, wouldn't you, under ordinary circumstances?

A. Yes; I would take that time; yes, sir.

Mr. ROBERTSON.—That's all.

Redirect Examination.

(By Mr. COBB.)

Q. Have you ever, in your practice, required three months in which to gather up all the facts, on which to draw your pleadings?

Mr. MANNIX.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

(Testimony of Henry Roden.)

Mr. COBB.—It's only in response to the last question they asked. [209]

The COURT.—Yes, I know; but the question is if he had in his practice.

Mr. COBB.—Oh, yes.

Q. Have you known of any instances in which it required three months, in the exercise of ordinary dispatch, to get sufficient facts on which to draw your pleadings?

Mr. MANNIX.—We object to that as incompetent, irrelevant and *matterial*—no bearing on any issue in the case.

Mr. COBB.—That's proper redirect examination—explanatory of the answer.

The COURT.—Yes; objection overruled.

A. No.

Recross-examination.

(By Mr. ROBERTSON.)

Q. You don't mean to say that there aren't such cases?

A. No; I don't mean to say that; no, sir.

Q. Now, as a matter of fact, Mr. Roden, in so simple a case as a case in the Commissioner's court, suing for damages for a breach of contract, in a suit which you recently instituted, as a matter of fact, you had that in your office for a period of at least two or three or four weeks, haven't you. Isn't that correct?

A. That is a fact; yes.

Q. Now, isn't it true that in every attorney's

(Testimony of Henry Roden.)

practice a client may come to him with a case that may take several weeks or several months, no matter how insignificant, or how significant the case may be, before you can finally get down into court, before you can bring a lawsuit?

A. Oh; it might be. I can imagine such circumstances.

Mr. ROBERTSON.—That's all. [210]

Testimony of J. R. Winn, for Defendants.

J. R. WINN, called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. Judge, you were the leading counsel in the case of John Tuppela against the Chichagoff Company, were you?

A. Why, you and I were associated together in the case; yes.

Q. At the time that you entered into the contract that is in evidence here already, May 2, 1919, did you know anything about the plaintiff in this case having ever been retained by John Tuppela?

A. The plaintiff is Mr. Mathison?

Q. Yes.

Mr. ROBERTSON.—Oh, we object to that.

The COURT.—Upon what ground?

(Testimony of J. R. Winn.)

Mr. ROBERTSON.—Incompetent, irrelevant and immaterial. We don't see how a negative proposition of that kind can prove their case. It isn't a question of whether or not Judge Winn knew about it. It's a question necessarily whether or not Mr. Tuppela knew about it in any event. He knew it.

Mr. COBB.—The purpose of that question is this: it seemed to me; at least, it was insinuated yesterday that Judge Winn or I took this case and concealed it from Mr. Mathison and failed to notify him of it; that we didn't act in good faith with him. Now, I propose to show that neither of us knew anything about this until the July following, when I discovered this contract among Mr. Tuppela's papers which Mr. Mathison had returned to him when he acquired the case. I think these facts should go to the jury. [211]

Mr. ROBERTSON.—We certainly think this question to Judge Winn is entirely irrelevant and immaterial. Judge Winn is not a party to this case. I don't know of anyone in this case who has so far in any wise impugned Judge Winn's integrity, his reputation or anything else. It is very true that there was something on the witness-stand that Mr. Mathison said with reference to Mr. Cobb's knowledge, but my recollection is that the Court struck that statement out on the motion of Mr. Cobb. Now, then, to call in Judge Winn and attempt to prove a negative proposition by him that he didn't know about this certainly doesn't affect the merits

(Testimony of J. R. Winn.)

of this case, as to whether or not Mr. Mathison is entitled to recover from Mr. Tuppela.

The COURT.—I think I'll sustain the objection. I don't think it is material to the case.

Mr. COBB.—How is that?

The COURT.—I'll sustain the objection.

Mr. COBB.—Well, it isn't very material. I think it was due Judge Winn. I don't see why these gentlemen object to it so much.

We next offer in evidence defendant's plea of laches in the case of John Tuppela against the Chichagoff Mining Company—

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, if the Court please. It has certainly not been pleaded here as a matter of estoppel. It is true that they pleaded in this case laches, but the defense of laches that the Chichagoff Mining Company set up against Tuppela might be entirely different laches than the defendant in this case set up against this plaintiff, and that would be [212] purely offering in evidence a decision—tantamount to offering in evidence a decision of a court; and the Court itself is the judge of the law and instructs the jury on the law. It's not for the jury to ascertain what the law is on the doctrine of laches.

The COURT.—What is the purpose of it?

Mr. COBB.—The purpose is to show that there was—

The COURT.—(Interrupting.) Let me see it.

Mr. COBB.—(Continuing.) —a delay of fourteen

(Testimony of J. R. Winn.)

months from the time that the suit could have been brought until it was brought by other counsel, and that because of that very reason a situation arose in which a plea of laches was successfully interposed in the lower court, and I propose to explain how we got out of that sort of situation and saved the case that was endangered by this man's negligence, just as I wrote him.

Mr. ROBERTSON.—Now, wait, Mr. Cobb. Don't testify there.

Mr. COBB.—How is that?

Mr. ROBERTSON.—Please don't testify unless you are on the witness-stand, unless it is something that is in evidence.

Mr. COBB.—It is in evidence, just as I wrote him. You introduced the letter.

Mr. ROBERTSON.—The plea of laches was already made—

Mr. COBB.—(Interrupting.) I don't care anything about the plea except that I want the fact to go before the jury that this plea was interposed and successfully interposed before the lower court.

Mr. ROBERTSON.—And it was also successfully overthrown in the Circuit Court of Appeals. The Circuit Court of Appeals held that such a plea didn't lie.

Mr. COBB.—No; they didn't hold that. [213]

Mr. ROBERTSON.—They overthrew it.

Mr. COBB.—No, no.

The COURT.—Wait a moment. There is no use of arguing over this. The best way to settle that

(Testimony of J. R. Winn.)

contention is to get the decision itself. But as to the question of whether or not this plea was entered, I think you may introduce the record to show that the plea was introduced; but not the contents of the plea.

Mr. COBB.—Yes, sir.

The COURT.—Objection sustained as to that extent—that you cannot introduce the contents of the plea.

Mr. COBB.—That a plea of laches was entered in that case.

The COURT.—That may be stipulated by counsel.

Mr. ROBERTSON.—Of course, we're reserving our rights to later show our contention as to what the Circuit Court of Appeals did with that plea.

The COURT.—Yes.

Mr. ROBERTSON.—And it is also stipulated that it is subject to the same objections and that Judge Jennings sustained it.

The COURT.—Subject to your objection as to its materiality.

Testimony of J. H. Cobb, for Defendants.

J. H. COBB, one of the defendants herein, called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By GROVER C. WINN.)

Q. Just state your name. A. J. H. Cobb.

(Testimony of J. H. Cobb.)

Q. Where do you reside

A. Juneau, Alaska. [214]

Q. How long have you been a resident of Juneau?

A. Twenty-five years next January.

Q. What is your profession or business?

A. Attorney at law.

Q. How long have you been admitted to practice?

A. Since 1884.

Q. Ever since you resided in the Territory?

A. Since I resided in the Territory I have been continuously practicing law.

Q. Are you the same person that is mentioned in a certain contract entered into between Mr. Tuppela and Judge Winn?

A. I am. To bring suit?

Q. Yes; to bring suit?

A. Yes; I was one of the attorneys who signed that contract.

Q. This Plaintiff's Exhibit No. 15, Mr. Cobb, I now hand you and ask you if that is the contract which you entered into? A. That is the contract.

Q. Did you bring suit against the Chichagoff Mining Company, as provided in that contract?

A. I did; I brought No. 1841—A, on the docket of this court, entitled John Tuppela against the Chichagoff Mining Company.

Q. How long have you been acquainted with Mr. Tuppela?

A. I got acquainted with Mr. Tuppela first on the second day of May, 1919, and from that time until he left last fall, I knew him and was inti-

(Testimony of J. H. Cobb.)

mately associated with him, first as his attorney and later as both his attorney and trustee to take care of his property.

Q. Now, I want you to state to the jury, Mr. Cobb, exactly the type of man Mr. Tuppela was, regarding his education, his [215] mentality and the condition of the man generally to take care of himself and his property?

A. Mr. Tuppela was an old man. He is now, I believe, sixty-nine years old. Three years ago he was between 66 and 67. He had been confined some three years in the asylum—three and a half years—as an insane. He was an old prospector who couldn't read or write English; couldn't draw a check. He could read, so he said and his friends, Finnish print, but writing he could neither do nor read. He had a very weak mentality. He could remember and state clearly and distinctly things that he had done in the process of mining, but he didn't have sufficient mentality to grasp anything much beyond that. He couldn't give you any narrative account of anything he had done, nor would he appreciate, seem to appreciate the bearing of one fact upon another.

Q. Now, Mr. Cobb, in the preparation of the case of Tuppela vs. the Chichagoff Mining Company, was Mr. Tuppela of such mentality that he was of any use to his counsel in preparing the case; that is, in looking up witnesses, interrogating witnesses, and did he have any ideas about what was pertinent facts of a lawsuit?

(Testimony of J. H. Cobb.)

A. He hadn't the slightest idea of the pertinency of any fact to his case, further than that he had located a claim and that it was his. That was as far as he seemed to grasp anything. He was not of the slightest help—couldn't be, owing to his situation and his mental capacity, and at no time could I depend upon him—nor did I try—to look up any testimony or interview any witness in the case or to report to me what the witnesses would testify to, because he was [216] mentally incapable of doing that in such a way that it could be depended upon. Whenever there was a witness to be looked up, I went to see him.

Q. Now, at the time that you met Mr. Tuppela and entered into your contract with him, I will ask you to state the financial condition of Mr. Tuppela if you know?

A. Mr. Tuppela, at the time that Judge Winn associated me with him in the case, or asked me to look into it to see whether we would take the case, which was about April 25th, was a pauper, supported by the institution known as the Pioneers' Home at Sitka, and he had been there since some time early the preceding March. I subsequently learned, in paying the bills, that he had been supported in part by Judge Winn before he went over there, and in part by some Finns here, from the time he reached here until he went to the Pioneers' Home. When he come over from Sitka, he was dressed in rags and looked like a scarecrow.

Q. Now, regarding the expenses of your case of

(Testimony of J. H. Cobb.)

Tuppela vs. the Chichagoff Mining Company, I will ask you if your contract provides for expenses?

A. It does. Mr. Tuppela had nothing in the world—

Mr. ROBERTSON.—(Interrupting.) Well, now, of course, that is not answering the question.

A. How is that?

Mr. ROBERTSON.—That's not answering the question.

The COURT.—Yes; simply what the contract provides; if it provides for the expenses.

A. It does.

Q. Just read that portion of your contract, if you will, Mr. Cobb. [217]

A. (Reads:) “The parties of the second part,” —that is Judge Winn and myself—“agree to bring and prosecute, to final judgment, said suit, with all reasonable skill and diligence and to advance the party of the first part the necessary costs and expenses of such suit.”

Q. Was that done by the parties—by the counsel for Mr. Tuppela?

A. It was, or we couldn't have proceeded at all.

Q. I will ask you to state, Mr. Cobb, if you know, approximately the costs of the case of John Tuppela vs. the Chichagoff Mining Company?

A. Do you mean the entire expenses that we had to pay out?

Q. Certainly? A. I know exactly what it was.

Q. Just state it.

A. From the time that we filed suit, paid the

(Testimony of J. H. Cobb.)

filing fees here, until we realized on the judgment the following year, Judge Winn and myself paid out \$5,100.70, and we didn't waste any money because we didn't have any to waste.

Q. Now, Mr. Cobb, of course as counsel, you were familiar with the case of Tuppela against the Chichagoff Mining Company? A. I think I was.

Q. Now, I will ask you when it appeared in that case, or in the preparation of that case, when it appeared that three men by the name of Hanlon, Bauer and Peterson became necessary, or appeared that they would be witnesses in that case?

A. Not until the answer of the Chichagoff Mining Company was filed. The case was in this shape—

Mr. ROBERTSON.—Now, wait a minute. Just answer the question.

Q. Just state how it happened to appear at that time. [218]

A. I can't make that clear without stating the status of the case at the time it was filed.

Q. Just state, then, the way that case was developed?

A. When the case was first presented, the Chichagoff Mining Company was in possession of the ground, claiming it under the deed made by Mills, the purported guardian of John Tuppela, and the single question that would naturally and inevitably present itself to a lawyer's mind was whether or not that was valid or invalid. After the suit was instituted, we simply attacked that deed and asked

(Testimony of J. H. Cobb.)

to have it placed back *in statu quo*. The Chichagoff Mining Company repudiated, so far as the Over-the-Hill claim, which was the valuable one, was concerned, the title under the Mills deed to this extent: that they denied that Tuppela or Mills either had ever had any claim to it, but went back to a man by the Name of Bauer, whom Tuppela was a partner of and advertised out. That was the only thing that it was necessary to prove back of the deed from Mills to the Chichagoff Mining Company and to set that aside.

Q. Now, I will ask you if upon the trial of that case, if Bauer and Hanlon were witnesses in behalf of the plaintiff.

A. They were not. They were witnesses in behalf of the Chichagoff Mining Company.

Q. Now, there have been some letters in evidence. Before we get to that, I think there's one that you wrote, as Mr. Mathison claims, some time in July, 1919. A. July 17, 1919.

Q. Just state to the jury how that happened, if you will.

A. After I brought suit and got service upon them, there was nothing to do until we got them in court. They had thirty [219] days in which to answer. As soon as their answer was filed, I immediately made application to the Court for an order of survey to go over and look at that mine—restrain the defendant from interfering with us in any way in going through the workings and seeing what they had. As soon as that was over with, I

(Testimony of J. H. Cobb.)

immediately made preparations for the trial and got a bunch of papers from Mr. Tuppela, pertaining to his mining claims, consisting of location notices, and so on, and among them I discovered this contract with Mr. Mathison. I asked him about that and he gave me the information that he was out of the case, as I wrote Mr. Mathison; that he had been unable to raise the money and so on, and some of the papers being missing that he ought to have, and telling me that Mr. Mathison had had all his papers as long as he was in Astoria, I wrote that letter to Mr. Mathison, asking him to look through them and to return any of his papers.

Q. And that is a letter to which you did not receive a reply?

A. I did not receive a reply for the reason, as Mr. Mathison has just stated, that he took me to be a real estate agent.

Q. Now, I will ask you if it ever has been your habit or custom in any wise to advertise as an attorney at law, or counselor at law?

A. No; never has. When I was associated with Mr. Maloney for about thirteen years after I came up here, he attended to getting out the letter-heads and had "Maloney & Cobb, attorneys at law" put on them.

Q. Then your letter-heads have always appeared—

A. For a great many years they simply bore my name and address for the convenience of parties that I was writing to, in case they should not be

(Testimony of J. H. Cobb.)

able to decipher my signature. [220]

Q. Now, you have stated that you have been an attorney since 1884? A. Since 1884.

Q. And you have practiced in the Territory about how long?

A. Twenty-five years next January.

Q. I will ask you if you are a member of any association of attorneys.

A. I am a member of the Alaska Bar Association and a member of the American Bar Association.

Q. Now, I will ask you Mr. Cobb, if, to your knowledge, the American Bar Association publishes a list of its members?

Mr. ROBERTSON.—What has that to do with all this?

Mr. WINN.—Just simply to show that if Mr. Mathison wanted to find out the business of Mr. Cobb, it would have been very easy for him to refer to the directory of the American Bar Association, and through what I am about to ask about.

Mr. MANNIX.—We object to that.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, as to what he might have looked up.

The COURT.—Objection sustained.

Q. Now, Mr. Cobb, later on, did you receive any letters at all from Mr. Mathison?

A. Addressed to me?

Q. Yes; addressed to you?

A. Yes; I received one.

Q. When was that, if you remember?

(Testimony of J. H. Cobb.)

A. Why, I got that letter just about the time that Judge Jennings had decided the case against us here—the letter in which he asked for Mr. Tuppela's address, which I had already furnished him. [221]

Q. Now, I will ask you if that is the letter (exhibiting letter)? A. Yes; that's the letter.

Q. That is Plaintiff's Exhibit No. 8. Now, is that in answer—I will ask you if that is in answer to your letter, Plaintiff's Exhibit No. 5?

A. No; no it isn't. Doesn't answer anything that I stated in there.

Q. Now, the letter you received from Mr. Mathison dated February 20, 1920, I will ask you if you answered that letter?

A. He says that I didn't. Mr. Mathison is very likely correct about that. I have looked through my file and I don't find any copy and I keep copies of most of my letters, especially of that type. Likely, to the best of my recollection, it simply asked for Mr. Tuppela's address, which I knew he already had. As I say, at that time Judge Jennings had just decided the case against us and I was exceedingly anxious to get it into the Court of Appeals the first of the May term, and from the time of his decision, from the time it was handed down, up to the time I left for San Francisco to argue it, I was extremely busy getting the case in shape and getting it briefed for a prompt hearing in the Appellate Court.

Q. I will ask you, Mr. Cobb, what was Mr. Tup-

(Testimony of J. H. Cobb.)

pela's habit regarding bringing you all his mail, or if you know how Mr. Tuppela received his mail.

A. From the time that I became his counsel, or very shortly thereafter, Mr. Tuppela asked me one day to see if there was any mail for him. He had considerable difficulty in speaking, enunciating distinctly, on account of having lost his upper teeth. I notified the postoffice to put all his mail in my [222] box. I think that must have occurred in June or July, 1919. From that time on up to the present time what mail Mr. Tuppela has had here has been put in my box, whether it was addressed in my care or not. And I read his letters to him when they were in English. I now have only one letter that he received—and he showed them all to me—written in Finnish, or two letters rather—two letters written in Finnish.

Q. Were either one of those letters from Mr. Mathison? A. No.

Q. Mr. Cobb, I think you stated the date that you entered into negotiations or became connected with this case of Tuppela vs. the Chichagoff Mining Company? A. Second day of May, 1919.

Q. And you remember when that case was filed, instituted here in court?

A. It was filed on the tenth.

The COURT.—I thought you stipulated that it was the eighth.

Mr. COBB.—No; the tenth. The contract of employment was prepared and the pleadings were prepared between the second and the ninth. The con-

(Testimony of J. H. Cobb.)

tract was signed on the ninth, and I am not sure, but I think the original complaint was verified on the eighth day and filed on the tenth.

Q. When was the case tried, if you remember?

A. The following November.

Q. And judgment, I think, you stated was entered here some time in—

A. Judge Jennings— The verdict of the jury was rendered on the 29th day of November—advisory verdict in an equity case. Judge Jennings took the matter under advisement until the latter part of the following February, when he handed [223] down his decision. The record was completed for filing in this Court on the 19th day of March. I got that record in shape and got it off three days later to the Circuit Court of Appeals, and it got there with two days only to spare to get on the May term, 1920, of the Circuit Court of Appeals.

Q. And there—

A. (Interposing.) And there the judgment was reversed. The plea of laches that was successfully sustained here, in the oral argument was practically abandoned.

Mr. ROBERTSON.—Now, wait. The record is the best evidence on that.

The WITNESS.—There is no record of that.

Mr. WINN.—That is outside of the record.

The COURT.—He may testify. Objection overruled.

Q. Go ahead and explain.

(Testimony of J. H. Cobb.)

A. We had pleaded that the property was much greater in value than \$1,000, which is what they paid for it at the guardian's sale, and that there was in law no consideration at all. The inadequacy of the consideration for the property was alone sufficient to set aside the guardian's sale and we introduced such testimony as we could get as to the value of the property. In answer to that it was testified by Mr. Freeburn that the property had very insignificant value in 1915, at the time they bought it, and that they thought it of so little worth that as a matter of fact they didn't develop it at all; and that they had run the tunnel which disclosed the ore bodies for the purpose of getting waste ground to fill in the stopes on their own ground as the ore was drawn off, and upon calling attention to that, that they [224] hadn't spent any money in developing it, as they plead, why the plea of laches, of course, that failed.

Mr. ROBERTSON.—We move to strike that out as not the best evidence and also as hearsay and not responsive to the question.

The COURT.—Motion denied. I don't think it is very material one way or the other, but I will deny the motion.

Q. I will ask you to state to the jury if you know where Mr. Tuppela is at the present time?

A. He is in Minneapolis.

Mr. ROBERTSON.—I ask that that be answered yes or no. Do you know?

The WITNESS.—Yes.

(Testimony of J. H. Cobb.)

Q. Whereabouts?

A. In Minneapolis, in an institution for the insane.

Q. Now, Mr. Cobb, I will ask you— Possibly they will admit that I was appointed guardian of the person of Tuppela either the thirtieth or 31st of July.

The COURT.—It is admitted in the pleadings.

A. Admitted in the pleadings.

Mr. WINN.—I think that's all.

Cross-examination.

(By Mr. ROBERTSON.)

Q. Mr. Cobb, in the winter of 1919, February, at the time that Judge Jennings handed down—

A. (Interrupting.) 1920.

Q. (Continuing.) —1920, when Judge Jennings handed down his opinion holding against Tuppela in the Tuppela-Chichagoff Mining Company case, about that time was the time that you [225] also received a letter from Mr. Mathison?

A. Somewheres along that time. The letter, I believe, is dated the 20th of February.

Q. Yes, sir.

A. And it might have got here any time from five days to a week later.

Q. And Judge Jennings' decision, as you now recall, was handed down on February 25th?

A. I don't recall the exact date of it, but it was about that time.

Q. In other words, you got that letter about the

(Testimony of J. H. Cobb.)

same date that Judge Jennings' opinion was handed down? A. I think it was a day or so later.

Q. Yes. Now, then, Mr. Cobb, how did you find Mr. Tuppela as a witness in assisting you to try the case? A. How is that?

Q. How did you find Mr. Tuppela as a witness in assisting you to try the case against the Chichagoff Mining Company?

A. He was very clear in his testimony which was limited to just what he had done in the way of locating and doing his assessment work.

Q. As a matter of fact he was very rational, was he not? A. Oh, yes; he was rational.

Q. Had a very good mentality.

A. No; I wouldn't say that. As I stated before he was very clear upon what he had done himself as a prospector, but anything beyond that, his mind wasn't—didn't seem to connect things.

Q. Now, as a matter of fact he stood cross-examination in that case exceedingly well, did he not? [226]

A. How is that?

Q. I say as a matter of fact, he stood cross-examination exceedingly well, did he not? A. Yes.

Q. Exceptionally well.

A. He simply told the jury the facts and stuck to them.

Q. Weren't you surprised that a man of his mental condition was able to so well withstand cross-examination? A. No; I was not.

Q. You were not?

(Testimony of J. H. Cobb.)

A. I was not. I found by practical experience that the man who is telling the truth is the man who usually stands the best cross-examination.

Q. I see. His testimony in that case was very clear, was it not?

A. Reasonably so, the way he expressed himself.

Q. Nothing in that case to indicate that he was at all mentally deficient, was there?

A. There was a circumstance especially in it, Mr. Robertson—

Q. I see.

A. (Continuing.) Which will illustrate just what I said about him.

Q. Now, then, do you remember the time that you had the proceedings down in the probate court, as a result of which Mr. Winn was appointed guardian of the person of Mr. Tuppela? A. Yes.

Q. Now, is it true that up to June 28th preceding that—that would be up to June 28, 1921—that Mr. Tuppela was perfectly rational? A. At first—
[227]

Q. (Interrupting.) No; wait. Answer that yes or no. A. No.

Q. He was not? A. I don't think so.

Q. I will ask you as to whether or not, in testifying before the Commissioner at those proceedings, you didn't state that up to June 28, 1921, Mr. Tuppela was perfectly rational at all times?

A. My recollection is that—

Q. (Interrupting.) I asked you to state whether or not you did make that statement?

(Testimony of J. H. Cobb.)

Mr. WINN.—Well, he is testifying as to his recollection.

A. My recollection is that it was the twenty-sixth or seventh. I may have said the 28th. I don't recall whether I did or not, but when I said "No," I had in mind my present recollection that the first signs of insanity were showing a day or two earlier than that.

Q. Up to June 26th or 7th, 1921, he was perfectly rational?

A. As far as I know and believe, he was.

Q. During all the previous time that you had known him, is that correct? A. How is that?

Q. All the previous time that you have known him— A. All the previous time.

Q. He was perfectly rational? A. Seemed to be.

Q. And at that time, on June 25th, 26th, or 27th, about these dates, I don't know which one, is the first time that Mr. Tuppela gave you any indication that he lacked sanity?

A. The only time I had seen any. [228]

Q. Prior to that time, he had never indicated to you that he was not sane, is that so?

A. No. I might state that he was examined before that upon a complaint being made that he was insane.

Q. But you, yourself?

A. I myself never saw anything.

Q. Never saw any indications prior to that time of insanity? A. No; not that I recall.

(Testimony of J. H. Cobb.)

Q. Well, you so testified in the proceedings, did you not? A. I think I did.

Q. His mental condition prior to that time was perfectly rational, was it not?

A. Yes; that is, he didn't seem to be insane at all.

Q. And he stood cross-examination well in the Chichagoff Mining case?

A. Yes, I said he stood that very well.

Q. And his testimony was clear, was it not?

A. Reasonably so.

Q. Now, didn't you testify at that hearing, proceedings before the Commissioner that his testimony was clear—not reasonably clear, but that it was clear in that case?

A. I don't recall just the words I used, but the facts were that it was clear; that he stood cross-examination well and you may call it reasonably clear or clear, I don't recall just what I said. It would mean practically the same thing.

Q. You don't mean or intend to convey, in using the words "reasonably clear," that it wasn't clear in—

A. (Interrupting.) I mean this, if I can make it perfectly plain to you and to the jury: some men's testimony is perfectly [229] sane, but not clear, because they don't express themselves well. There are other men whose ideas are not clear, but they express themselves clearly. John Tuppela had great difficulty in expressing himself, but considering the man's education—practically none at all—his difficulty in speaking, the narrow scope of his

(Testimony of J. H. Cobb.)

mentality, and so on, I thought, taking all those things into consideration, that his testimony, both on direct and cross-examination in the case of John Tuppela against the Chichagoff Mining Company, was remarkably clear.

Q. You thought it was remarkably clear.

A. Yes; if it was simply limited to what he had done as a prospector.

Q. So far as you recall at this time, there was none of the jurymen thought that there was anything— A. (Interrupting.) How is that?

Q. None of the jurymen that thought it wasn't clear, either?

Mr. WINN.—Oh, I object to that.

The COURT.—Objection sustained.

Q. Now, in that case, Mr. Cobb, Mr. Tuppela testified in the English language, did he not?

A. Yes.

Q. No interpreter? A. No.

Q. Testified as a witness; was on the witness stand right in this room? A. Yes.

Q. And gave his testimony in English?

A. Gave his testimony in English. [230]

Q. Both on direct examination and cross-examination? A. I think so.

Q. Well, that is your recollection, is it not?

A. That is my recollection. I'm satisfied I'm correct about it. There was a party that wanted to act as interpreter, but I didn't use him.

Q. And his testimony was clear under those circumstances? A. Just as I have stated.

(Testimony of J. H. Cobb.)

Q. After Judge Jennings' decision and oral opinion on February 25, 1920, you, as counsel for Mr. Tuppela, exerted rather strenuous efforts, did you not, to raise sufficient money to take your case to the Circuit Court of Appeals? A. How is that?

Q. I say, after Judge Jennings, on February 25th, had handed down his opinion which was against Mr. Tuppela, you, on behalf of Mr. Tuppela exerted rather strenuous endeavors to raise sufficient money to, to get sufficient money to take the case to the Circuit Court?

A. I don't know what you mean by "strenuous efforts." Judge Winn was away at the time and I had to raise about \$2,000 and I got it.

Q. Now, in getting that \$2,000, you importuned various people to assist you—

Mr. WINN.—Now, I object to that as not proper cross-examination and immaterial. Has nothing whatsoever to do with this case.

Mr. ROBERTSON.—Well, Mr. Cobb testified that he and Mr. Winn put in so much money—\$5,100.71

The COURT.—No, no.

Mr. ROBERTSON.—As costs. [231]

The COURT.—He testified that he put in so much; that the costs were \$5,100.70. That is what his testimony was.

Q. Did you testify that you and Judge Winn put up as costs in the case, \$5,100.71?

A. I don't recall just whether I expressed it that way or not. The idea I intended to convey was that

(Testimony of J. H. Cobb.)

the actual cost—the money was all paid through me—was that the actual cash that I paid out in the progress of that litigation was \$5,100.70.

Q. And you didn't personally put it all up?

A. No; I didn't put it all up.

Q. Judge Winn didn't put it all up? A. No.

Q. I am not asking you who put it up, but various people put it up? A. No.

Mr. WINN.—Now, I object to that.

Q. Did Mr. Tuppela put it up? A. No.

Q. Did it take you some time to raise the money before it could be put up? A. No.

Q. Did it take you a week to do so?

A. I don't recall?

Q. Took you a few days, did it not?

A. I don't recall how long it took me to make the arrangements that I did make to get the money that I needed to save that case.

Q. You do remember that it took you some time to get the money?

A. Oh, I didn't do it in a minute. [232]

Q. No; and you didn't do it in a day?

A. I don't recall.

Q. Did you do it in two days?

A. I don't recall.

Q. You didn't have the money personally to put it up?

Mr. WINN.—Now, I object to that.

The COURT.—Objection sustained.

Mr. ROBERTSON.—I reserve an exception.

Q. Did Mr. Tuppela have the money personally?

(Testimony of J. H. Cobb.)

Mr. WINN.—Now, I object to that. He has already gone over that with this witness.

The COURT.—Well, he may answer that question.

The WITNESS.—What is it?

The COURT.—If Mr. Tuppela had the money or not? A. Mr. Tuppela did not.

Q. Judge Winn put any up?

A. Judge Winn was in Los Angeles at that time and until after the case had gone to the Appellate Court, and he couldn't and didn't put up anything.

Q. Now, then, at the time that you wrote to Mr. Mathison on July 17, 1919, Plaintiff's Exhibit No. 5, that was at the time that you stated on direct examination that you had gone over the papers of Mr. Tuppela and found that Mr. Mathison had this contract, and that you understood that he had more papers belonging to Tuppela and you wrote then about it?

A. Mr. Tuppela told me that he had turned all his papers over to him. That is the only reason I had to think that he had any.

Q. And you wrote personally to Mr. Mathison at that time? [233]

A. Yes, and gave him Mr. Tuppela's address, which he afterwards wrote and asked me for again.

Q. Now, then, Mr. Cobb, in February, 1920, at almost the identical day that you received Enoch Mathison's letter, in which he referred to this matter, that was almost the same day on which

(Testimony of J. H. Cobb.)

Judge Jennings handed down his decision in this court against you and which you were then seeking to obtain money to get into the Circuit Court of Appeals in April so as to get it in there on the May term, why didn't you write Enoch Mathison then, knowing that he had had a contract with Mr. Tuppela, and ask him to assist you in the appeal?

A. I think probably, if it ever occurred to me at all, the reason that I didn't was that Tuppela told me that Mathison threw up the case because he didn't have money to come to Alaska on.

Q. That was the reason?

A. I don't know if it occurred to me to write to Mr. Mathison. He was a stranger to me.

Q. That is the best reason you can give to the jury?

A. That is as good a reason as I can give them. It never occurred to me at all.

Q. Never occurred to you at all.

A. A stranger living in Astoria, and whom I'd been informed had thrown up the case, to advance any money?

Q. You knew Mr. Mathison was an attorney, didn't you.

A. Oh, yes; I knew that he was.

Q. Pardon me? A. I knew that he was.

Q. You knew prior to that time that he had been Mr. Tuppela's [234] attorney, didn't you?

A. I knew that at one time he had a contract with him.

Q. Prior to that time? A. Yes.

(Testimony of J. H. Cobb.)

Q. You had a copy of the contract in your possession, didn't you? A. How is that?

Q. You had a copy of the contract in your possession at that time, didn't you? A. I think I did.

Q. Yes, sir.

A. Had all of Mr. Tuppela's papers.

Q. And you didn't write to Mr. Mathison in any manner whatsoever? A. Certainly not.

Q. Now, then, Mr. Cobb, you filed a complaint in the Chichagoff Mining Company case on May tenth, 1919, didn't you, as you have stipulated here?

A. That is my best recollection. The record will show the exact date.

Q. Well, you stipulated that that is the date.

A. Yes.

Q. And the summons; so that you instituted suit on that date? A. Yes.

Q. Now, I ask you, Mr. Cobb, didn't you have to file an amended complaint before you could maintain your action in that suit?

A. I filed an amended complaint.

Q. Yes. Why did you file an amended complaint?

A. I don't remember. I filed it voluntarily.
[235]

Q. You didn't file it just for the fun of the thing, did you? A. Oh, no.

Q. You filed it because you thought it was necessary.

A. I filed it because I thought it was a better way of proceeding.

(Testimony of J. H. Cobb.)

Q. Yes, sir. A. Undoubtedly.

Q. And do you recall when you filed your amended complaint, the complaint on which you won? A. How is that?

Q. Do you recall when you filed the amended complaint, the complaint on which you won?

A. I think it was tried—

Q. No; do you recall when you filed it?

A. I do not.

Q. It was some time after you filed the original complaint, wasn't it?

A. Oh, yes; it was afterwards, of course. You couldn't file it before you make an amendment.

Q. Well, I say, some time after. You understand, Mr. Cobb, that part of it. Now, then, Mr. Cobb, I understood you to tell the jury that it never became necessary, in the case against the Chichagoff Gold Mining Company, to have Bauer, Hanlon and Peterson as witness until after the pleadings set up by the defendant in answer to your amended complaint, is that correct? A. How is that?

Q. That it never became necessary to have Bauer, Hanlon or Peterson as witnesses until after the facts developed by reason of the answer that the Chichagoff Mining Company set up to Tuppela's amended complaint—isn't that correct? [236]

A. I think so.

Q. And that Bauer, Peterson and Hanlon were witnesses for the Chichagoff Mining Company?

Mr. WINN.—Now, if the Court please, that is not his testimony.

(Testimony of J. H. Cobb.)

The COURT.—No.

Q. Wasn't that what you testified, Mr. Cobb?

A. Repeat that question.

Q. That Bauer, Peterson and Hanlon were witnesses for the mining company?

A. No; I didn't testify to that. The testimony was that Hanlon and Bauer were called to testify for the Chichagoff Mining Company.

Q. Who did Peterson testify for?

A. How is that?

Q. Who did Peterson testify for?

A. We took Peterson's deposition.

Q. Peterson testified—

A. (Interposing.) On behalf of the plaintiff.

Q. (Continuing.) For Tuppela, did he not?

A. Yes.

Q. And Mr. Peterson's evidence, at that time you introduced, did you not, Mr. Cobb?

A. How is that.

Q. I say at the time of that case you introduced Mr. Peterson's evidence because you considered it material to your case, did you not?

A. It was very material after that answer was filed in which they had repudiated title that they had bought from Tuppela.

Q. Certainly. Now, then, you stated, Mr. Cobb, that you never advertised. Is that correct? [237]

A. No, I didn't say that.

Q. Pardon me?

A. I didn't say that. If I did, I didn't mean it.

Q. You never advertised as an attorney, I mean.

(Testimony of J. H. Cobb.)

A. I haven't for a good many years. When I was younger, that is at the time when I was in partnership with Mr. Maloney, I think he carried a card, but I don't recall how long I myself put a card in the paper or had an advertising letter-head.

Q. You do carry advertisements in some of the legal lists, do you not?

A. My name appears in most of the lawyer lists that pretend to give a complete one, and for quite a while I made up the rating of Alaska attorneys for Martindale, in consideration of which they printed my name in it in caps, or heavy face letters, but they paid me besides for the work I did, and as a part of that, they sent me their directory. I don't carry any card in it.

Q. What?

A. I don't carry any card in it.

Q. You don't mean to say that it doesn't appear in Martindale's as attorney at law at Juneau, Alaska? A. Yes.

Q. Instead of having advertising rates, you perform the labor of giving them a rating on the rest of us here in Juneau, is that correct?

A. Well, throughout Alaska, so far as I know. They wrote to me some years ago and asked me to make this arrangement and I consented to do this.

Q. You carry your name in a few other lists, don't you? [238]

A. I don't know. That is the only one I have outside of the American Bar Association.

(Testimony of J. H. Cobb.)

Q. You don't carry your name in any other at all? A. How is that?

Q. You don't carry your name in any other at all?

A. If they put it in there, it is not with my knowledge or with or without my consent. I don't know anything about it and don't care anything about it.

Q. And if your name appears in any of them—

Mr. WINN.—(Interrupting.) I object to that, if the Court please.

Mr. ROBERTSON.—Very well.

Q. Now, then, Mr. Cobb, how long have you been practicing law at Juneau?

A. It will be twenty-five years next January.

Q. Continuously?

A. Except— Yes, I might say continuously.

Q. You have been practicing law continuously for the last twenty-five years in Juneau?

A. Yes; been out a few times.

Q. With some exceptions? A. How is that?

Q. With some exceptions?

A. With some exceptions?

Q. Yes, sir.

A. No; I have been practicing continuously.

Q. You mean to say that you have been practicing continually in Juneau for the last twenty-five years, without any exception whatsoever?

A. I said that I had been out a few times. I know what you're fishing for. Why don't you come out and ask about it? [239]

Q. I want to know whether you are going to make

(Testimony of J. H. Cobb.)

the general statement that you have practiced the last twenty-five years, or haven't. A. I have.

Q. Continuously?

A. Continuously except when I have been out of the Territory. I think the longest I was ever out was last winter—five months.

Q. When you made out the trust agreement, Mr. Cobb, with Mr. Tuppela on August 19, 1920, who was present there at the time when you had that signed up? A. The witnesses to it were there.

Q. Who was that? Do you recall?

A. Mr. Valentine was one of them and there was some Finnish—Ada White, who was stenographer and notary public in the office of E. Valentine, was a witness, and there were some Finnish friends, whose names I don't just recall, of Tuppela.

Q. You didn't have any of his Finnish friends sign as witnesses? A. I did not.

Q. Which one of his Finnish friends acted as interpreter?

A. I think it was Frank Oja, if I recall.

Q. Where is Frank Oja now?

A. I don't know.

Q. Has he left the Territory?

A. I don't know.

The COURT.—What is the purpose of this?

Mr. ROBERTSON.—Well, Mr. Cobb has testified that this man can't read English. Now, I have got a right to show that he has got an agreement, signed by him, and to find out whether it was interpreted.

(Testimony of J. H. Cobb.)

The COURT.—Objection? [240]

Mr. WINN.—Yes, if the Court please.

The COURT.—Objection sustained. The question of the validity of that agreement is in no way in issue in this case.

Mr. ROBERTSON.—Oh, no. That wasn't the purpose at all.

Q. Referring to Plaintiff's Exhibit No. 14 in this case, Mr. Cobb, signed by John Tuppela in the presence of yourself as notary public, one of the pleadings in the case—

A. (Interrupting.) The reply to the amended answer?

Q. Yes, sir. A. Yes.

Q. I call your attention to the fact that it appears that you took Mr. Tuppela's verification on it?

A. Yes.

Q. Who acted as interpreter in that case for Mr. Tuppela? A. There wasn't any interpreter.

Q. There wasn't any interpreter?

A. No. He could understand English if it is spoken clearly and you try to make him understand; that is, he could understand sufficiently to swear to a pleading on the best of his knowledge and belief that it was true—"I verily believe," as the form goes.

Q. Well, you had no difficulty in explaining to him the various facts in such pleadings as you drew for him without the use of an interpreter?

A. I don't think, since you ask me the question,

(Testimony of J. H. Cobb.)

that Mr. Tuppela at all had any accurate grasp of the meaning and effect of that reply.

Q. You don't think he had it?

A. I explained the best I could and he signed it and swore to it [241] as he verily believed.

Q. Yes, sir.

A. But to say that he had sufficient mentality to grasp the full significance of a pleading of any kind, I don't think he did.

Q. You don't think he had mentality to understand a pleading of any kind, as a matter of fact, is that what I understand you to say?

A. I wouldn't say a pleading of any kind. I would say the ordinary pleadings, expressed in legal verbiage, as they are.

Q. Now, you make that statement even though you do contend, at the same time, that up to June 26, 1921, he was perfectly rational all the time, as I understand you?

A. If you want to put it in that argumentative way, I think that's about right.

Q. I don't intend to put it in any argumentative way. I just wanted to know whether or not you would qualify that any by your previous statement that up to June 26th or 27th, 1921, he was rational.

A. No; I don't want to qualify it in any way.

Q. What did the bills consist of that Judge Winn paid up to the time that you first met Mr. Tuppela?

A. How is that?

Q. You stated in your direct examination, that you found that Judge Winn had paid a great many

(Testimony of J. H. Cobb.)

bills from some time before up to the time that you met Tuppela.

A. No, I didn't say a great many.

Q. Well, all right—bills. What bills were they?

A. I don't recall. They were down to some of these Finnish boarding-houses. They amounted to something like fifty or [242] sixty dollars. It was afterwards taken into account and repaid to Judge Winn under the contract; and there were other bills that Judge Winn stood good for—that he paid himself.

Q. And that, I understand that that was on April 25th, when you ascertained at that time about the financial condition of Tuppela; is that correct?

A. How is that?

Q. That was on April 25th, 1919, that you ascertained the financial condition of Tuppela?

A. No.

Q. Wasn't it? What date was it?

A. I had no occasion to inquire into it except in a general way what his financial condition was on that date. That was the date as I recall it that Judge Winn asked me—Judge Winn spoke to me before he went to Sitka, before the Governor sent him to Sitka as a public charge—to bring this case, stating that he had been busy on some of these pirate cases and had intended to, or had looked into it and didn't have any contract with him and hadn't determined whether he was going to bring it or not, but he asked me to come into it if I thought he

(Testimony of J. H. Cobb.)

could win it. I told him that I thought it could be won. That was the 25th.

Q. The 25th of April?

A. The 25th of April, if I recall the date. And I sent for Tuppela to Sitka to come over. He reached here on the second of May, and I talked a little with him that day and he came up the next day and I at once prepared the pleadings. I went to see Judge Winn with him and we talked over the matter of compensation and it was agreeable to him that the amount that [243] we asked, in view of the work to be done and the risks to be assumed and the costs that we were going to be put to, should be put in, and he stated that we would have to provide for his support—he was too old to support himself—and I told him I would put it in. He wanted us to pay the costs because he couldn't. I told him that some courts objected to going into such a contract, but that I thought, under the peculiar circumstances, that it was proper and put it in. The contract was prepared and the pleadings were also prepared and Mr. Tuppela went away, and I told him I would let him know when I wanted him, and I think he came back maybe once or twice in the meantime, I don't know, but he was in my office again on the ninth, verified the complaint and signed the contract.

Q. Now, as a matter of fact, prior to that time, Mr. Cobb, you had been trying the case of Hanlon vs. the Chichagoff Mining Company?

A. I had tried that the preceding spring, I

(Testimony of J. H. Cobb.)

think—maybe that same spring. I don't just recall the date.

Q. That preceding spring that Tuppela came—that Judge Winn called Tuppela to your office?

A. How is that?

Q. This preceding spring of 1919—is that correct?

A. I think that that case—Judge Winn was on the other side—

Q. (Interrupting.) Mr. Faulkner, wasn't it?

A. No, no; in another case. No; that was defended by Mr. Faulkner. As I recall it now, that was tried the preceding term of court.

Q. And you waited until you had finished that case before you [244] *you* ascertained whether or not you were in a position to accept the position as Tuppela's counsel? A. How is that?

Q. And you had to wait until the termination of that action before you were able to ascertain whether or not you were in a position to—

A. (Interrupting.) Oh, no. No; that case was out of the way before I had any knowledge that Tuppela was out of the asylum even.

Q. Before you had any knowledge that he was out of the asylum? A. Yes.

Q. I see.

A. And quite a while before Judge Winn asked me to become associated with him in the trial of the Tuppela case.

Q. That case did pertain also to a part or some

(Testimony of J. H. Cobb.)

of the same property that involved the claim of Tuppela?

Mr. WINN.—I think this has gone far enough. It is not proper cross-examination. Doesn't pertain to any facts in this case.

The COURT.—I'll hear from you.

Mr. ROBERTSON.—Very well.

The COURT.—Objection sustained.

Q. You say that Mr. Tuppela is back in Minneapolis, in some institution? A. How is that?

Q. You say that Tuppela is now in Minneapolis in some institution. What institution is it that he is in?

A. Well, sir, I have a poor recollection of names; pretty good memory for everything else. His guardian here can tell you. The information comes from him. I didn't go back there myself. I simply furnish the money as his trustee.

Q. You don't know, then, as a matter of fact, where he is except [245] that he is in Minneapolis? A. How is that?

Q. I say, you don't know where he is, as a matter of fact, except that he is in Minneapolis?

A. No; I can't recall the name of the place. It's Lawrence; something like that, I think—Doctor Lawrence's sanitarium.

Recess until 2 P. M., this day, Nov. 10, 1922.

Friday, 2 P. M., this day, Nov. 10, 1922.

Court met pursuant to recess.

J. H. COBB (on the stand).

(Testimony of J. H. Cobb.)

Redirect Examination.

(By GROVER C. WINN.)

Q. Mr. Cobb, this morning Mr. Robertson referred to an amended complaint filed in the action of Tuppela vs. the Chichagoff Mining Company. I will ask you if that is so? A. Yes, sir.

Q. I will ask you if it is anything unusual to file amended complaints in actions?

A. It is very common.

Q. Was there anything unusual in the filing of this amended complaint?

A. Not that I know of, except I don't recall what it was. There was an omission or an inaccuracy in the pleading. I don't recall what it was. I remember I deemed it proper to file an amended complaint.

Q. You remember about the date that the amended complaint was filed?

A. I looked up the record during the noon recess. It was filed on June 16, 1919. [246]

Recross-examination.

(By Mr. ROBERTSON.)

Q. It was filed, Mr. Cobb, after there had been a demurrer to it, had there not?

A. There was a demurrer interposed by Mr. Faulkner, but I don't recall whether the demurrer raised the point I wanted to amend or not. At any rate, before the demurrer was heard, I asked leave to file an amended complaint, and it was granted,

and the demurrer was then withdrawn and an answer filed. That is what the record shows.

Mr. ROBERTSON.—Now, at this time we desire to move to strike out— In the first place, we make a motion to strike out, as irrelevant and immaterial, the evidence produced by the witness J. H. Cobb, relative to the interposition of the defense of laches by the Chichagoff Mining Company in the case of Tuppela vs. the Chichagoff Mining Company.

The COURT.—The jury will retire to the jury-room. I'll hear you on that.

Mr. ROBERTSON.—The Court will recall, on that point, that that evidence went in subject to our objection. Mr. Cobb, in his testimony later, on cross-examination, possibly on direct, stated that that defense was withdrawn from the Circuit Court of Appeals, or abandoned by the appellee, the Chichagoff Mining Company, and that that doctrine was not passed upon by the Circuit Court of Appeals. Now, of course, we take it that it is a matter of elementary law that this court will take judicial notice of the decision of our own appellate court, and that it appears that the Circuit Court of Appeals, regardless of whether or not it stated positively that such a principle of laches did or did not apply in that case, that [247] The Circuit Court of Appeals, in its decision, sets forth that such a defense was set up by the Chichagoff Mining Company in the lower court, and then went ahead and proceeded to reverse the opinion of the lower court;

necessarily, thereby, overthrowing the defense of laches and necessarily holding that that defense was not a valid defense in that case, because if it had been a valid defense, then the result necessarily would have been a sustaining of the decision of the lower court. We think, for that reason, at this time that it is the settled law by the Circuit Court of Appeals and settled law in this case, that the defense of laches of seventeen or eighteen months—eighteen months is the number of months stated by the Circuit Court of Appeals, considering the mentality and general characteristics of John Tuppela, does not constitute a defense, and therefore, in this case, the jury has nothing whatsoever to do with any such defense.

Now, in addition to that motion, we have two or three other motions that we would like to make. Would your Honor like to have them all made at one time so as to get at them and dispose of them?

The COURT.—Very well.

Mr. ROBERTSON.—We also move, at this time, if the Court please, to strike the defense relative to the nonadmission to practice of Mr. Mathison in this district, there having been no evidence produced whatsoever to show that Mr. Mathison was not a proper person to enter into this contract with Mr. Tuppela, or that there was anything whatsoever which, because of his lack of admission to practice in this district, prevents him from enforcing this contract. [248]

We also move to strike the defense of negligence in the second affirmative defense, which is inter-

posed in this action, on the ground that both as a matter of law under the Circuit Court of Appeals' decision, applying to the peculiar facts of this case, and also that as a matter of fact in this case there is neither any law nor evidence to sustain the defense that Mr. Mathison was in anywise negligent in carrying out his performance or his portion or conditions agreed to be performed under and pursuant to this contract; that there was no negligence and that assuming even though he had done nothing for a period of five months—assuming, for the sake of argument, from March 11, 1918, to August 25th or 26th, 1918—that, under the circumstances of this case, as detailed, would not of itself constitute negligence of an attorney who has entered into a contract which does not provide that the only method by which he can recover his client's rights is by suit, but that he has a right to recover by such means as may be deemed best in his judgment.

Further than that, we move to strike the defense known as the third affirmative defense, which is a defense set up that the plaintiff practiced fraud and imposition upon the defendant Tuppela. We contend that there is an absolute nullity of any evidence in this case of any fraud at any time practiced by Mr. Mathison upon Mr. Tuppela; that there isn't a scintilla of evidence to the contrary except that it was entered into freely by both parties and in the best of good faith.

We also move to strike out the fourth affirmative defense, which in a measure sets up again the negligence of the defendant, and also abandonment of

employment, and we contend [249] in this case, that there is no evidence of any abandonment by Mr. Mathison, of his employment. On the contrary, it shows right along the opposite. He not only advised Mr. Tuppela what his rights were, but that furthermore he certainly pursued Mr. Tuppela to as great an extent as any conscientious attorney could do in pursuing a client in the proper manner. It is true that he didn't hot-foot it after Mr. Tuppela to Alaska, but he pursued methods which we submit to the Court were ethical methods; that is to say, when not having heard from Mr. Tuppela, he made such inquiries as he could and directed from time to time communications to him, endeavoring to ascertain why it was that he had not supplied him with this information.

We move to strike the fifth affirmative defense, which is again on the theory that "if plaintiff did not wholly abandon said contract of employment alleged by him, prior to the time of the employment of other counsel by Tuppela, he was guilty of gross professional negligence, which justified the said Tuppela in discharging him." On this again we submit that there is neither any law in the case nor any evidence which would warrant such defense going to the jury—that there is no laches in this case and no gross negligence. On the contrary, all the way through is shown the good faith of Mr. Mathison and the attempt to reach a position where he could fulfill and carry out such parts or terms of the contract as he was to carry out under the contract; and to the last affirmative defense which sets up a

defense to the third cause of action, that at this time there was not a scintilla of evidence whatsoever to contradict Mr. Mathison's evidence that he did loan or advance \$362.50 to Mr. Tuppela that Mr. Tuppela was to pay [250] back to him.

Whereupon, after argument, the Court granted the first motion and denied the remaining five.

Mr. ROBERTSON.—I would like to again offer in evidence at this time plaintiff's exhibit for identification, the counter-affidavit of John Tuppela, made on September 12, 1919, before J. H. Cobb. We think it becomes material at this time. One reason is that it shows that the defendant employed other counsel very soon after the time that he left Mr. Mathison in Astoria. The other reason is that it is a circumstance to bear out our evidence to the effect that Mr. Mathison advised and informed Mr. Tuppela to not sign any papers when he went back to Sitka.

After argument the fact developed that said affidavit had already been introduced in evidence, and marked Plaintiff's Exhibit No. 17.

Mr. COBB.—I want to present a motion before the jury comes in.

The COURT.—You may do so.

Mr. COBB.—Now come the defendants, the evidence having been concluded, and move the Court to instruct the jury to return a verdict for the defendants upon the second cause of action, on the following grounds, to wit:

First. There is nothing in the pleadings or the

evidence to sustain a verdict against the defendant J. H. Cobb, as trustee for John Tuppela.

Second. Because the evidence shows conclusively that plaintiff was not at the time of the making of the contract sued upon, or subsequently, a member of the bar of Alaska, or qualified to become a member, and not qualified to perform the contract on his part; and it further shows that he never employed associate counsel, as he might have done under the [251] contract, to perform the contract with him, and there was not, and never has been any party to said contract, either originally or by association with plaintiff thereunder, qualified and capable of performing.

Third. Because the suit is based and bottomed upon the allegation that plaintiff was wrongfully discharged by the defendant John Tuppela, and the evidence fails to show that plaintiff was ever wrongfully discharged, or discharged at all. The most that is shown, is that John Tuppela neglected his case and failed to co-operate with plaintiff in his employment, and plaintiff thereupon elected to treat such conduct as a discharge and abandoned his contract.

Fourth. The evidence conclusively shows that plaintiff was guilty of such gross negligence and delay as fully justified Tuppela in ignoring the contract and employing other counsel to protect his rights.

Fifth. Neither the pleadings nor the evidence would sustain a verdict and judgment for plaintiff

on the second cause of action, for this: Tuppela had a legal right to discharge plaintiff as his attorney with or without cause, subject only in the latter case to payment for services rendered and plaintiff's remedy is a suit in *quantum meruit* and not for damages on the contract.

Mr. ROBERTSON.—For the sake of the record, I would like to make a motion for an instructed verdict in favor of the plaintiff as against the defendant, on the second cause of action, for one-half of the sum of \$380,000, or \$190,000; and on the third cause of action for the sum of \$362.50, with interest at six per cent per annum from the date on which this complaint in this action was filed, which was October 13, 1921. [252]

The COURT.—Motion will be denied.

Mr. COBB.—I don't believe there is any ruling upon my motion to instruct a verdict on the second cause of action.

The COURT.—The motion will be denied in both cases.

Mr. COBB.—Note an exception.

And thereupon, the defendants in writing requested the Court to charge the jury as follows:

“Gentlemen of the Jury: The contract upon which the defendant sues in this case, obligated him, as an attorney at law, to bring a suit in behalf of the defendant, John Tuppela, against the Chichagoff Mining Company to recover certain mining property on Chichagoff Island, Alaska. Such a suit could only be brought in the courts of Alaska;

therefore, while the contract is silent as to the place where the suit was brought, it is to be read and construed as though it expressly provided for the bringing of the suit in the courts of Alaska. It further appears that at the time of making the contract, plaintiff was not qualified in law to bring such suit or perform the services he was obligated to perform under it, nor did he, during the time he claims the contract was in force, or at any time, qualify himself to perform the contract by complying with the laws of Alaska, and becoming a member of the bar of this Court. He cannot therefore, recover anything for a breach of said contract, or for any services he may have rendered under it."

But the Court refused said request, and the defendants then and there excepted.

Whereupon the Court instructed the jury as follows:

Instructions of Court to the Jury.

"Gentlemen of the Jury: The plaintiff, Enoch E. Mathison, by this action, is suing the defendant, John Tuppela, J. H. Cobb, as Trustee for John Tuppela, and Grover C. Winn, as guardian of the person of John Tuppela, for damages for an alleged [253] violation of a contract entered into on March 11, 1918, between the plaintiff and the defendant, whereby the said Tuppela employed plaintiff as his attorney to enforce his, Tuppela's claim to certain interests in several mining claims in the Sitka precinct, Territory of Alaska, and for damages for the unlawful withholding and removal of the ore from

said mining claims; also, by a separate cause of action, he is suing the defendants for moneys loaned to Tuppela in the sum of \$362.50 between March 11, 1918, and September of that year.

The complaint which you will have with you when you retire to consider the case in the jury-room, consisted of three causes of action, but the plaintiff has elected to pursue his remedies on the second and third causes of action, and to abandon, for the purposes of this suit, the first cause of action. And, so you will not, in your consideration of the case, pay any attention to the allegations set forth in the first cause of plaintiff's complaint." [254]

I instruct you that this is a civil action and the issues therein are to be determined only by a preponderance of the evidence. The preponderance of evidence is the greater weight of evidence. The burden of proof is upon that party to the action who, in his complaint or answer or reply, alleges the affirmative of any issue.

In every civil action there are what are called the issues in the case. Issues are of two sorts—issues of law and issues of fact. It is the duty of the Court to decide all issues of law and the duty of the jury to decide all questions of fact; and, having been instructed by the court as to the law of the case, it is their further duty to apply the law as stated by the Court to the jury to the facts as found by them and render their verdict accordingly.

The issues in a civil action are presented by means of pleadings, which are supposed to be set forth in

the complaint and answer and reply, and constitute the cause of action of the plaintiff and the defense of the defendant. On the part of the plaintiff the ultimate facts constituting his alleged cause of action or the wrong done him by the defendant are set forth. These facts are set forth in the Complaint. In his answer the defendant sets forth in writing his defense to the action, which may be by way of denial of the facts set forth in the plaintiff's complaint; or, if he has any affirmative matter which in law would constitute a defense to the matter set forth in the complaint, he may incorporate such matter in his answer. The plaintiff may then, in his reply, deny the affirmative matters set forth in defendant's answer, and also may therein set forth any new matter which constitutes a defense to the affirmative matter set forth in defendant's answer, and [255] this new matter set forth in the reply is deemed to be denied without any further rejoinder by the defendant.

Thus, matters set forth in the complaint and denied in the answer, and any new matter set forth in the answer and denied in the reply, and the new matter in the reply, constitute the issues of fact, or the controverted facts in the case, to which the evidence is presumed to be directed.

I have thus given you, in a general way, an informal statement of what the issues of fact are in a civil action. In this case, the pleadings consist of the complaint of the plaintiff; the answer of the defendant and the reply of the plaintiff.

The complaint, as before stated, constitutes two

causes of action only, these being the second and third causes of action, the first cause of action having been eliminated from your consideration.

In the second cause of action, the plaintiff sets forth in substance, that he was, on March 11, 1918, and at all times subsequent thereto, and now is, a duly licensed and qualified attorney at law, having his office at Astoria, Clatsop County, State of Oregon. This allegation is contained in the first paragraph of the second cause of action.

In his answer the defendant denies this allegation on information and belief—that is to say, he puts in issue whether or not the defendant was on March 11, 1918, and subsequent thereto, and whether he is now, an attorney at law, as set forth in paragraph one of the second cause of action of plaintiff's complaint.

In the second paragraph of the second cause of action of plaintiff's complaint, it is set forth that on August 19, 1920, the defendant Tuppela conveyed all his right, title and interest [256] in all his property to J. H. Cobb, as trustee; and that the said Cobb ever since has been and now is, the duly authorized and acting trustee of the property and estate of said Tuppela.

This is admitted in the answer of the defendant, so that it is not an issue of fact in the case and may be accepted by you as an established fact.

In the third paragraph of plaintiff's second cause of action it is set forth that on July 28, 1921, John Tuppela, defendant, was pronounced by the Probate Court of Juneau Precinct an insane person,

and Grover C. Winn was by said court duly appointed guardian of his person, and is now the duly qualified guardian of the person of John Tuppela.

In their answer to this paragraph the defendants admit that same and therefore this is not a controverted fact, and will be taken by you as an established fact.

In the fourth paragraph of the second cause of action of plaintiff's complaint, it is alleged that on or about the eleventh day of March, 1918, John Tuppela, the defendant, entered into a contract with the plaintiff wherein and whereby the defendant engaged and employed the plaintiff as an attorney at law for the purpose of taking the necessary proceedings for the recovery of certain mining properties and money which the defendant claimed he owned and which had been wrongfully taken from him, described as the Over-the-Hill, Pacific, Golden West, Rising Sun and Porphyry lode mining claims located at Chichagof, in the Sitka Recording Precinct, Territory of Alaska; and in said paragraph the plaintiff referred to a certain contract recorded in book 4, pages 116-117 of the Sitka Recording Precinct.

In their answer to this paragraph of the plaintiff's complaint, the defendants admit that John Tuppela entered into a contract with the plaintiff, but deny the legal effect of the same, as claimed by the plaintiff, and set forth in their [257] answer a copy of the contract, which is as follows:

“AGREEMENT.

This instrument, made this 11th day of March, 1918, by and between John Tuppela of Astoria, Oregon, party of the first part, and Enoch E. Mathison, of Astoria, Oregon, party of the second part, WITNESSETH:

That whereas the party of the first part claims to have interest in several of the mining claims situated at Chichagof in the Sitka precinct in the Territory of Alaska, more particularly described and named as follows, to wit: Over the Hill lode mining claim, Pacific lode mining claim, Golden West lode mining claim, Rising Sun lode mining claim, and the Porphyry lode mining claim, all at Chichagof, in the Sitka Precinct of the Territory of Alaska aforesaid; and

Whereas, the party of the first part has other interests in other properties at or near Sitka, Alaska,

Whereas, title and interest of the party of the first part to the property or properties aforesaid, is in dispute, and

Whereas, the party of the second part is an attorney at law, duly licensed to practice, and

Whereas, the party of the first part has engaged, retained and employed the party of the second part to act for him in his stead in all legal matters pertaining to the prosecution of the claims of the party of the first part, in and to the property described above, and to represent him in the courts of law and equity, and in all other courts in which it may become necessary for the proper prosecution of

said claims, and for the complete settlement and adjustment arising out of said claims, or actions instituted thereof.

Now, therefore, the party of the first part, in consideration of the services to be rendered by the party of the second part, does hereby promise and agree that the party of the second part may receive and recover one-half of the interests in said properties hereinbefore described, or one-half of the net proceeds from the sale of same, or if any damages be recovered from any of the parties claiming interest in said properties, then and in that case, the party of the first part agrees and promises to pay one-half of the proceeds collected of said damages.

It is further understood and agreed by and between the parties hereto that the party of the second part may associate any other attorney or attorneys with him as associate counsel in all matters herein, and the party of the second part, in consideration of the payments to be made as hereinbefore set forth, promises and agrees to represent the party of the first part in all matters pertaining to his right or rights in the properties aforesaid, and to prosecute any action or suit growing out of same, and in all courts, as in his judgment shall deem best and proper, for the successful consummation of said litigations or claims, and the party of the second part, as attorney for the party of the [258] first part, is hereby authorized and directed to collect any moneys that may be recovered from said interests or action, and to account to the party

of the first part in accordance with the terms of this agreement.

In witness whereof, the parties hereto have hereunto set their hands and seals in duplicate, this 11th day of March, 1918.

JOHN TUPPELA,

Party of the First Part.

ENOCH E. MATHISON,

Party of the Second Part.

Signed and sealed in the presence of

LAURI MOILANEN.

J. J. BARRETT.

State of Oregon,

County of Clatsop,—ss.

Be it remembered that on this 11th day of March, 1918, before me, the undersigned, a notary public, in *and said* County and State, personally appeared the within named John Tuppela and Enoch E. Mathison, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and notarial seal, the day and year last above written.

J. J. BARRETT,

Notary Public for Oregon."

But the defendants deny the legal effect of said contract as pleaded by the plaintiff in said paragraph IV. By paragraph V of his complaint, it

is alleged by plaintiff that in pursuance of the terms of the contract aforesaid, plaintiff faithfully and diligently performed each and all of the covenants contained therein and undertaken by the plaintiff and then sets forth that he, the said plaintiff, made a thorough investigation of the facts in respect to said claims and the law applicable thereto, and during the period of five months devoted a [259] large portion of his time to said matter under the terms of the contract, and that because of said contract, the plaintiff was bound to carry on the prosecution of said claims on behalf of defendant and was thereby prevented from acting as attorney for any other parties in the matter of said prosecution; and that because the plaintiff was a party to said contract, he was compelled to neglect and did actually neglect other business during said period and was prevented from devoting his time to the prosecution of other business, and was compelled to remain at his office during said period of time, holding himself in readiness at all times to carry on the prosecution called for in said contract.

These allegations of paragraph V are denied *in toto* by the defendants in their answer and these constitute one of the issues of this action.

In the sixth paragraph of the second cause of action in plaintiff's complaint, it is alleged that on or about the — day of September, 1918, the defendant, without just or legal cause, and without sufficient reason therefor, breached said contract and discharged plaintiff from further control or participation in the prosecution of said claims and

in violation of the terms of said contract. That plaintiff had at all times diligently and faithfully carried out the work under said contract engaged to be performed by him, and that plaintiff was at all times ready, able and willing to proceed with the prosecution of said claims and to fulfill his covenants under said contract, and offered said defendant his services under said contract, but that defendant refused said services and without legal or sufficient cause for said refusal, discharged the plaintiff, and thereby rendered the performance of said contract on the part of plaintiff, according to the terms thereof [260] impossible.

Each and all of these allegations so set forth in paragraph VI are denied by the defendants in their answer and these are among the issues in the case.

By the seventh paragraph of the second cause of action of plaintiff's complaint, it is alleged that defendant on or about said — day of September, 1918, in violation of said contract, engaged, employed and retained other attorneys and proceeded with the prosecution of his said claim to the properties described in paragraph IV mentioned in said contract, and, as a result of said action on the part of the defendant, a judgment and decree was thereafter entered in the United States Circuit Court of Appeals for the Ninth Circuit, on or about the 20th day of July, 1920, in favor of the defendant John Tuppela and against the Chichagof Mining Company, whereby said defendant recovered one-half interest in the Over-the-Hill and Pacific lode mining claims, together with the whole of the Rising Sun

lode mining claim and all ores extracted from the said mining claims by the Chichagof Mining Company and for a judgment in favor of the said Tuppela according to his interest in said property and according to the value of the ores extracted therefrom after deducting the cost of mining and extracting the same; and also for the costs of the said action.

To this allegation of paragraph VII the defendants answered, denying that in September, 1918, in violation of the covenants of the contract alleged by plaintiff, or otherwise, the defendant Tuppela engaged, employed and retained other attorneys and proceeded with the prosecution of his claim to the property described in paragraph IV of the complaint, but they [261] admit the decree of the United States Circuit Court of Appeals for the Ninth Circuit, as alleged, denying that the said decree was the result of any action taken by the defendant Tuppela in the month of September, 1918.

By the eighth paragraph of the second cause of action of the complaint, the plaintiff sets forth that pursuant to a decree, a settlement was had between the defendant Tuppela and the Chichagof Mining Company, under the terms of which it was stipulated between the respective parties that the mining properties aforesaid were worth \$1,200,000, and plaintiff alleges that those mining properties aforesaid were worth not less than said sum, and the said Tuppela should receive \$300,000 cash as his share of the earnings therefrom, and his costs of legal procedure; and that in accordance with the terms

of said settlement, Tuppela received one-half interest in the Over-the-Hill, the Pacific lode mining claims, and the whole of the Rising Sun lode mining claim, and received \$300,000 in cash and the costs of the legal proceedings aforesaid.

Answering said paragraph, the defendants admit that a settlement was had, but deny the terms thereof, as alleged by the plaintiff in said paragraph, but state that the correct terms of the settlement were that John Tuppela procured a decree for an undivided one-half interest in the Over-the-Hill and an undivided one-half interest in the Pacific lode mining claims and the whole of the Rising Sun lode mining claim and also a decree for an accounting of the ores mined and milled from said claim by the said Chichagoff Mining Company, and that a settlement was had in the matter of the accounting, and that said Tuppela received, as his share, after paying his part of the expenses of said action, the sum of \$114,250, and an undivided [262] one-fourth interest in the Over-the-Hill and the Pacific lode mining claims, and an undivided one-half interest in the Rising Sun lode mining claim.

The only issue in paragraph VII is whether defendant violated his contract by employing other attorneys, and in paragraph VIII, as to the terms of the settlement.

Paragraph IX of the said cause of action sets forth that the mining claims mentioned in said decree were the same referred to in the contract of employment entered into on March 11, 1918, be-

tween plaintiff and said Tuppela, and that the defendants' rights in said claims were capable of being enforced at the time of the execution of said contract and moneys due defendant were collectible. These allegations of this paragraph are not denied in defendants' answer and must be taken as true.

By paragraph X of the second cause of action of the complaint, the plaintiff alleges that the services rendered by plaintiff to the defendant were of great value to the defendant and that the contract entered into on the 11th day of March, 1918, by and between the plaintiff and the defendant was a contract of great value to the defendant and that the breach of the said contract by the defendant as set forth therein caused great damage to the plaintiff, which he alleges to be the sum of \$450,000, and that but for said breach of said contract, plaintiff would have successfully prosecuted said claims and would have earned, received and realized from said contract the sum of \$450,000; but that through the breach of said contract, the plaintiff was deprived wholly of said sum which he otherwise would have earned and received, and that he has received nothing from the terms of said contract.

Answering to this allegation, the defendants deny that the plaintiff rendered any services to the defendant, John Tuppela, [263] and deny that the services claimed to have been rendered were of any value whatever to the defendant. They further deny that the contract of March 11, 1918, between the plaintiff and defendant was a contract of great or any value to the plaintiff, and deny that the

plaintiff has suffered any damages whatever by breach of the contract on the part of John Tuppela, and deny that there was any breach. They further deny that the plaintiff would have successfully prosecuted said mining claims, and would have received or realized the sum of \$450,000 or any sum whatever. They further deny that through the breach of said contract, the plaintiff has been deprived of the sum of \$450,000, or any sum whatever.

Therefore, the allegations set forth in paragraph X of the second cause of action are all denied by the defendant and constitute one of the issues of fact to be decided by you in this action.

In the third cause of action plaintiff alleges that between the 11th day of March, 1918, and the 30th day of August, 1918, at the special instance and request of John Tuppela, plaintiff advanced and loaned to the defendant certain sums of money aggregating \$362.50, an itemized statement of which is attached to the complaint and marked Exhibit "A." He further alleges in paragraph V of said third cause of action that defendant promised to repay plaintiff the said sum within a reasonable time thereafter, but has neglected, failed and refused to pay any part thereof, and that there is due plaintiff thereby the sum of \$362.50—to all of which the defendants state they have no knowledge or information sufficient to form a belief, and therefore deny.

The defendants also set forth five affirmative defenses, to which I will call your attention. [264]

The first affirmative defense is that plaintiff was

not at the time of the execution of the contract referred to in the complaint and is not now and never has been, qualified and capable of performing on his part the duties and professional services undertaken by him in this: that it was the duty of the plaintiff, under the said contract, and it was the contemplation of the parties, that plaintiff should bring an action on the part of John Tuppela against the Chichagoff Mining Company, and that such suit could only be brought in the District of Alaska, and that plaintiff was not at the time of the execution of said contract, is not now and never has been, admitted to practice in the courts of Alaska.

For a second affirmative defense, the defendants allege that if it be true, as claimed by plaintiff, that the defendant Tuppela did discharge plaintiff as his attorney, that such discharge was justifiable in that plaintiff by his gross negligence failed, neglected and refused to bring the suit contemplated in the said contract for more than one year after the contract of employment, or to come to Alaska to investigate the rights of said Tuppela, or, in fact, to take any steps on behalf of said Tuppela.

For a third affirmative answer to the matters set forth in the complaint, the defendants allege that the plaintiff ought not to maintain this action for the reason that the contract mentioned in plaintiff's complaint was obtained by plaintiff's fraud and imposition, practiced upon the defendant John Tuppela in that the said Tuppela, having been adjudged insane, was discharged from the Morningside Insane Asylum on December 17, 1917, and that some

time about March 1, 1918, he met the plaintiff at Astoria, Oregon; that plaintiff held himself out as an attorney-at-law; [265] that said Tuppela was an ignorant miner and prospector, unable to read or write the English language and was at said time in bad health mentally and physically and in destitute circumstances; that Tuppela at said time was desirous of finding an attorney who could and would undertake to provide the moneys to meet the necessary expenses of bringing and prosecuting the suit in his behalf against the Chichagoff Mining Company to recover his mining claims, and who could and would prosecute said suit to final judgment in consideration of a moiety after fruits of such litigation, the said Tuppela having no other means of procuring said moneys and legal services; that Tuppela fully acquainted the plaintiff with his condition and all facts concerning his rights to said property, and plaintiff then and there agreed on his part to bring such action for Tuppela and prosecute the same to final judgment with reasonable skill and diligence, and to furnish all moneys necessary for the expenses of the litigation and the support of Tuppela during such litigation in consideration of an undivided one-half interest in such property, in the event the plaintiff should succeed in recovering the same for said Tuppela; and after said agreement and understanding between the plaintiff and Tuppela had been reached, plaintiff, as Tuppela's attorney, undertook to reduce the same to writing for execution on the part of both Tuppela and himself, but in so doing, plaintiff intentionally and

fraudulently omitted from said writing the obligation on his part to furnish such money and to bring such suit with reasonable skill and diligence, but falsely represented to said Tuppela that the contract as drawn by plaintiff correctly embodied their agreement as aforesaid, and the said Tuppela, being unable to read and relying upon the representations of the plaintiff, signed the same, believing [266] it to contain the stipulations and undertakings of the plaintiff aforesaid.

And for a fourth affirmative defense, the defendants allege that after the employment of the plaintiff by the defendant Tuppela on March 11, 1918, it became and was the duty of the plaintiff to bring and prosecute such action with reasonable skill and diligence; that plaintiff knew or should have known that delay in bringing said action and promptly assisting the rights of Tuppela greatly endangered his interest and the rights involved; but that plaintiff wilfully and negligently failed to institute such suit or take any steps whatever under said employment for the period of more than one year; that the said Tuppela waited upon the plaintiff for more than one year, repeatedly requesting him to bring said action, and that the said plaintiff, failing to do anything, but having wholly abandoned his employment, the said Tuppela, on or about May 2, 1919, employed other counsel to perform such services on substantially the same terms as he had employed plaintiff; that plaintiff knew of such employment and knew that such employment was had under the belief on the part of Tuppela that plaintiff had

abandoned his connection with the case, and so knowing, made no objection thereto and did not aid or offer to aid in any way in the prosecution of said suit, but acquiesced in the changes made in the situation and obligations by Tuppela, intending thereby to escape all the obligations and risks of said employment, and, in the event of the final recovery of said property by other counsel employed by Tuppela, to assert a claim under the said contract of March 11, 1918; and that if plaintiff had not in fact abandoned his said employment he could and would have aided and taken part in the prosecution of said suit and shared in the [267] burdens and risks as well as in the benefits derived therefrom, and that by such conduct he misled the said Tuppela, inducing him to employ other counsel and pay them full value for professional services in said action.

And for a fifth affirmative defense the defendants plead that plaintiff ought not to maintain the said suit for the reason that if plaintiff did not wholly abandon said contract of employment alleged by him prior to the time of the employment of other counsel, he was guilty of negligence which justified the said Tuppela in discharging him. That plaintiff knew, or by the use of ordinary skill and diligence should have known that delay in bringing said action or suit and in the prompt assertion of the claim of Tuppela to said property would greatly endanger the rights of the said Tuppela thereto by laying the foundation for a plea of laches by the said Chichagoff Mining Company.

And for a further affirmative defense to the third cause of action set out in plaintiff's complaint, which is the cause of action for moneys loaned defendant Tuppela, defendant alleges that if plaintiff did advance any moneys as stated in said cause of action, he made such advances under his contract with Tuppela, which said moneys were only to be repaid on the successful termination of a suit to be brought and prosecuted by the plaintiff and that the moneys so advanced to and expended by Tuppela, if any, were of no benefit whatever to the said Tuppela.

To the affirmative matters set forth in the answer of defendants, the plaintiff, in his reply, denies that the defendant Tuppela received as his share, under the accounting in the settlement with the Chichagoff Mining Company only \$114,250 and an undivided one-fourth interest in the Over-the-Hill and the [268] Pacific lode claims, and an undivided one-half interest in the Rising Sun lode claim, but alleges that the said Tuppela received, under said accounting, the sum of \$300,000 and an undivided one-half interest in the Over-the-Hill and Pacific lode claims and the whole of the Rising Sun lode mining claim.

In reply to the first affirmative defense contained in the second amended answer—which is the defense by defendant that plaintiff was not a duly qualified attorney, capable of performing the duties in the contract—plaintiff admits that he has never been admitted to practice in the courts of the Territory of Alaska, and he further admits that it was within the contemplation of Tuppela and plaintiff to prose-

cute to final determination, by action, legal or otherwise, the claims of said Tuppela against the Chichagoff Mining Company; but denies every other allegation contained in said first affirmative answer and defense.

Replying to the second affirmative defense, the plaintiff denies each and every allegation contained therein.

Replying to the third affirmative defense contained in the second amended answer the plaintiff denies each and every allegation thereof, except that plaintiff admits that Tuppela became insane on or about the year 1914 and was sent to Morningside Asylum for treatment and was discharged therefrom on or about December 17, 1917; and that plaintiff is and held himself out as an attorney at law for many years and long prior to 1918; and that after said Tuppela's discharge from said asylum, he was desirous of finding an attorney to bring suit on his behalf to recover certain mining claims and other property from the Chichagoff Mining Company, and that on or about March 11, 1918, plaintiff and Tuppela entered into a contract, a copy of [269] which is attached to said amended answer.

Plaintiff denies, in his reply, the affirmative matter contained in the fourth affirmative defense, the fifth affirmative defense of defendant's answer, and also the affirmative defense as to money loaned, alleged in the third cause of action of the complaint.

These several affirmative statements and the denials thereof, constitute the issues of fact in this case as disclosed by the pleadings. Of these issues,

the question which first arises under the pleadings is the capacity or capability of the plaintiff to perform the conditions of the contract of March 11, 1918.

It is admitted by the plaintiff, in his reply, that he has not been admitted to practice as an attorney at law in the courts of the Territory of Alaska, but it is alleged that he is an attorney and was at all times mentioned in the complaint an attorney authorized to practice in the courts of the State of Oregon where the contract appears to have been made.

I instruct you, as a matter of law, that the courts of the Territory of Alaska, wherein the real property mentioned in plaintiff's complaint and described in the contract is situated, have the sole jurisdiction of an action to recover the mining property therein mentioned; and if the plaintiff was not authorized to practice the profession of attorney at law in the Territory of Alaska at the time of entering into such contract, he would not be qualified to perform the professional services required by said contract, and if that were so, without any other stipulation being entered into in said contract, it would be a defense to said action.

But if you further find from the evidence that the defendant [270] Tuppela, who entered into the said contract of employment with the plaintiff, was informed of such act of plaintiff not being authorized to practice in Alaska at the time of entering into the said contract, and that such contingency, with the knowledge and consent of the said Tuppela

was provided for in said contract, by authorizing the plaintiff to associate competent counsel, authorized to prosecute the contemplated proceedings, suits or actions with the plaintiff, and without expense to defendant Tuppela, then the fact that the plaintiff was not authorized to practice law in the Territory of Alaska would be no defense in this action, and if you so find you will not further consider said defense.

The second issue raised on said contract is that the defendant fraudulently, purposely and intentionally omitted from said contract certain stipulations which were agreed upon by the plaintiff and the defendant as a part of said contract, namely, that plaintiff, in reducing said contract to writing, intentionally and fraudulently omitted from such writing the obligation on his part to furnish the moneys necessary for the prosecution of any action that might be required and to bring and prosecute said suit or action with reasonable skill and diligence.

I instruct you that it is admitted by the pleadings that the contract of March 11, 1918, between the plaintiff and the defendant Tuppela was entered into between said parties on said date, and under the foregoing allegation in the answer, a question arises whether said contract was fairly and properly entered into between the parties and whether the same fully expressed their understanding as to the nature of the employment, and that the same was fully understood by the defendant [271] in said action; and that no concealment prejudicial to the

defendant in entering into such contract as to any of the facts in relation to plaintiff's obligation was had by the plaintiff to the detriment of the defendant.

I instruct you that under the law of this Territory, the measure or mode of compensation of attorneys is left to the agreement expressed or implied by the parties, and that if a contract is entered into between an attorney and a client providing for the amount and manner of the compensation of the attorney for his services in a professional capacity, such contract will control and be binding on the parties; provided, however, that such contract was fair, reasonable and fully comprehended by the client and that no fraudulent representations or concealments were made by the attorney before or at the time of entering into the contract.

If you find from the evidence in this case that the written contract of March 11, 1918, was fair and reasonable under the circumstances of the case and fully comprehended by the defendant Tuppela, and expressed the terms of the understanding between the plaintiff and the defendant, then said contract as to its terms, must be upheld.

If, however, you find from the evidence that the plaintiff omitted from the written contract any obligation on his part to be performed, as set forth in defendant's affirmative defense, the plaintiff cannot recover in this action, and your verdict should then be for the defendants.

I instruct you that in every contract between an attorney and client, it is implied that there shall be

the utmost good faith and confidence in their mutual transactions, and it is further implied that the client will inform his attorney as to [272] all matters relating to the subject of the litigation within his knowledge and that the attorney will, on his part, use ordinary diligence, dispatch and skill in the prosecution of the claims or interests entrusted to him. By "ordinary diligence, dispatch and skill" is meant such as under the circumstances of the case would ordinarily be used by reputable members of the profession.

If, therefore, you should find from the evidence that the plaintiff used reasonable diligence, skill, care and dispatch in the preparation and prosecution of such matters as were committed to his care by the defendant Tuppela, and that he was under the terms of the contract and understanding between the plaintiff and the defendant competent and authorized to act in that behalf, and that he was, without justifiable cause, prevented by the defendant from carrying out his contract, then it is your duty to find for the plaintiff.

On the other hand, if you should find from the evidence that the plaintiff did not, with ordinary dispatch, diligence, care and skill, proceed with the matters entrusted to him in the performance of his contract, and thereby the defendant, Tuppela, had reasonable cause to believe that he, the said plaintiff, had abandoned his contract, the plaintiff cannot recover on the second cause of action.

I instruct you in this connection the plaintiff is not suing the defendant for the value of the services

performed by him under the contract, but is suing for damages for the alleged breach of the contract of employment of March 11, 1918, by the defendant in that he alleges the defendant discharged him and thus rendered it impossible for him to perform the contract, and thereby he, the plaintiff, suffered damages in the sum of [273] \$450,000.

I instruct you that in every contract of employment between attorney and client, even though such contract provides that the compensation of the attorney shall be contingent upon the successful prosecution of the suit committed to the attorney, there is applied the authority to discharge the attorney, even though without cause or justification; and if such discharge is given without justifiable cause, the client is liable to the attorney for all damages which the attorney may sustain through the breach of the contract. On the other hand, if the attorney, without cause, abandons his contract of employment, he cannot recover anything.

If the fault lies with both parties, the attorney may recover only the reasonable value of the services that have been performed by him; but as this, the second cause of action is not for the value of the services performed, but for damages for wrongful discharge, if you find both parties were in fault, the plaintiff can recover nothing thereon.

I instruct you that under the contract, the employing by the defendant Tuppela of other attorneys to prosecute the action to enforce his rights against the Chichagoff Mining Company by itself cannot be considered as a discharge, or breach of his con-

tract unless such employment of other attorneys was made over the objection or protest of the plaintiff; or the defendant's actions or neglect were such as to lead the plaintiff, under the circumstances, to believe that he was discharged.

If, from the evidence, you find that the contract of March 11, 1918, was fairly and understandingly entered into between the parties thereto, without concealment or fraud, and that the plaintiff did not abandon said contract, but that the defendant, without just cause, discharged the plaintiff from his [274] employment under said contract and thereby breached the same; and further find that the plaintiff was at all times competent and willing to perform the conditions and obligations of his contract and made reasonable efforts so to do, then it would be your duty to find for the plaintiff and to assess his damages under the contract.

I further instruct you that in this case, the contract provides that plaintiff shall receive for his compensation for the successful prosecution of the rightful claims of defendant, one-half of what may be recovered. Therefore, the measure of damages of plaintiff, should you find for plaintiff, is the amount of money he would have received had he, the plaintiff, been allowed to complete the performance of his contract, less the value of such services as he would have been required to perform under his contract, and also deducting such expenses as he would have been compelled to incur in carrying out his contract.

In determining this amount, you may consider,

together with the amount of money plaintiff would have received, had he been allowed to complete his contract—

1. The professional capacity or capability of plaintiff to prosecute said action under the contract.

2. The amount of work he performed, as compared with the amount required to complete the contract.

3. The amount which he would have been required to perform under the contract to carry it to a successful conclusion, and,

4. The expenses incident to the completion of the contract that would likely have been incurred by him, and award the plaintiff such damages as you justly think he is entitled to. [275]

As to the third cause of action, which is for money loaned, I instruct you that if you find from the evidence that the amounts set forth under this cause of action, were loaned to the defendant by the plaintiff, as alleged in the complaint, then you should find for the plaintiff in the sum of \$362.50, with interest at the rate of six per cent per annum from October 18, 1921.

The burden is on the plaintiff to prove the sums loaned for the reason that the defendants deny the loans.

Defendants further set forth in their affirmative answer that if any money was advanced to Tuppela, as alleged, it was advanced under the contract of March 11, 1918, and was to be repaid only upon the successful prosecution of an action to be brought

by plaintiff under the said contract, and that plaintiff neglected to prosecute the said action.

I instruct you that you should not consider this defense unless you shall have found, from the evidence, that the plaintiff and defendant contracted that plaintiff was to advance moneys for the prosecution of the proposed suit or action, and that the plaintiff fraudulently omitted such stipulations or obligation from the written contract of March 11, 1918.

If you shall have so found by a preponderance of the evidence, that such stipulation or obligation was so omitted from the contract of March 11, 1918, then you should consider whether or not such moneys were advanced pursuant to the terms of such stipulation; and if you find the moneys were so advanced under such omitted stipulation, then the plaintiff should not recover.

But if you find from the evidence that the plaintiff did lend defendant said moneys, or any part thereof, and did not [276] advance them under a stipulation fraudulently omitted from the contract, then your verdict should be for the plaintiff for such sums as you shall have found plaintiff loaned to defendant.

I instruct you that in this case the two main questions are, first, whether or not the plaintiff was discharged by the defendant, or whether he abandoned his contract of employment; and, second, if you find that the plaintiff was discharged, whether or not such discharge was wrongful and without sufficient cause.

I instruct you that mere neglect or inattention of the client to the matters entrusted by him to the attorney will not of itself operate as a discharge of the attorney from his employment or justify the attorney in treating it as a discharge. Such neglect, inattention or failure to co-operate with or aid his attorney, to constitute a discharge of the attorney from his employment, must be attended by such other acts, conduct or conditions as would lead an ordinary person reasonably to believe that such conduct and actions were intended as a discharge; and, in determining whether or not the defendant Tuppela's conduct was sufficient to lead the plaintiff reasonably to believe that he was discharged, you may take into consideration all his, Tuppela's, acts, both of omission and commission, from the date of his contract up to and including that of his employment of such other attorneys; also the fact of his employment of other attorneys, his mental condition and all other facts and circumstances bearing on that issue, shown by the evidence; and from such facts, circumstances and conditions determine whether the plaintiff was, as a reasonable man, justified in believing himself discharged by the plaintiff from the employment contracted for. [277]

If such facts, circumstances and conditions were such as would warrant a man of ordinary intelligence and prudence in believing that it was the intention of the defendant to discharge plaintiff from his employment, then your duty would be to find that the defendant discharged plaintiff.

On the other hand, if the defendant Tuppela's

conduct was such as would not warrant a man of ordinary intelligence and prudence in believing that he, Tuppela, intended to discharge plaintiff from his employment under the contract, then plaintiff was never discharged, and if plaintiff, without just cause or reason, treated the contract as rescinded by the defendant Tuppela, he, the plaintiff, cannot recover on his second cause of action.

And as to the question of discharge of the plaintiff, the burden of proving the same and that the discharge was without sufficient cause or wrongful is upon the plaintiff.

If you find from the evidence that the plaintiff was discharged by the defendant Tuppela, then under the instructions heretofore given you, it will be your duty to inquire whether such discharge was wrongful.

In deciding this question, you will consider that it is implied in every contract of the employment of an attorney that he will exercise ordinary skill, care, prudence and dispatch in attending to his client's business; that is to say, the degree of skill, care, prudence and dispatch which a reputable lawyer would exercise under the same or similar conditions.

If he fails in this regard, I charge you that the client is justified in discharging him and the attorney cannot recover.

The rule, as applied to the evidence in this case simply means, was there uncalled-for delay by plaintiff in failing to prosecute the matters committed to him by the defendant Tuppela [278]

prior to the time plaintiff was discharged by the defendant Tuppela, if you shall find he was discharged?

By "uncalled-for delay" is meant such delay as a reputable lawyer, of ordinary prudence and skill, would not be guilty of, under the same or similar conditions.

In determining this question, you are to take into consideration the contract between the parties; the understanding between the parties to the contract after the contract was entered into as to their mutual duties with reference to the contract, their conduct in relation to the understanding; the probabilities or lack of probabilities of delay prejudicing defendant's rights, the conditions surrounding the parties and all other facts and circumstances bearing upon the question; and if it has been shown to you by a preponderance of the evidence that the discharge was wrongful, your verdict should be for the plaintiff on the second cause of action. If it was not wrongful, but justified under the circumstances and conditions shown in the evidence, your verdict should be for the defendant.

I instruct you that if you find from the evidence that the plaintiff failed to use ordinary and reasonable diligence and dispatch in carrying out the obligations of his contract with the defendant by him to be performed under the circumstances and conditions shown by the testimony, and because thereof the defendant was reasonably led to believe that plaintiff had abandoned said contract and by reason of such reasonable belief, the defendant em-

ployed other counsel, and such other counsel brought an action against the Chichagoff Mining Company; and that plaintiff, during the pendency of such action so brought by other counsel, was informed thereof, or by reasonable diligence could have been informed thereof; and that plaintiff failed or [279] neglected to object to such employment of other counsel, and failed and neglected to aid or offer aid or assistance to such other counsel in the prosecution of the action, intending thereby to avoid the burdens and responsibilities of the prosecution and to receive the benefits derived therefrom, the plaintiff, under such conditions would not be entitled to recover on his second cause of action.

I further instruct you that you, as the jury, are the sole judges of the effect and value of the evidence addressed to you. Your power of judging the effect of evidence is not, however, arbitrary, but to be exercised by you with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds.

If you find a witness wilfully false in one part of his testimony, you may distrust him in others.

This being a civil case, the affirmative of the issue must be proved; that is to say, the affirmative of every issue, either in the complaint, answer or reply; and when the evidence is contradictory, the findings shall be according to the preponderance of

evidence. You are further instructed that evidence is to be established, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict.

I instruct you further that it is admitted that John Tuppela was, in July, 1921, adjudged insane and the fact that his testimony has not been produced before you is not to be taken as a circumstance, or lead you to any inference against defendants [280] because of such nonproduction.

From the evidence it appears that from December 17, 1917, to June, 1921, he was sane, and you have a right to consider his conduct and actions during this period, as well as the conduct and actions of the plaintiff, in arriving at your conclusions under the evidence and the instructions I have given you.

I again call your attention to the issues in the case and the several elements involved at the risk of repeating the foregoing instructions.

1. The contract between the plaintiff and John Tuppela is admitted to have been made. If such contract was understandingly and fairly entered into between the plaintiff and the defendant Tuppela, and the plaintiff did not abandon his employment under such contract and was wrongfully discharged or prevented from carrying it out by Tuppela, he is entitled to recover his damages for the breach of said contract.

2. If plaintiff abandoned the employment under

said contract, he cannot recover anything in this action for damages for breach of that contract.

3. If plaintiff failed to exercise ordinary and reasonable skill, care, diligence and dispatch in beginning and prosecuting the suit under the contract, or in fulfilling the terms of the contract in any way, and because thereof Tuppela employed other counsel; and plaintiff failed and neglected to object to such employment or to aid or offer to aid such other counsel, thereby intending to avoid the burdens but enjoy the fruits of the action by other counsel, he cannot recover anything for damages under the allegations of this complaint.

4. If the plaintiff, through the fault of both the plaintiff and the defendant, was prevented from carrying out the terms of the contract or prevented from prosecuting the action or [281] *or* rights of defendant against the Chichagoff Mining Company, then the plaintiff cannot recover anything in this action.

5. The plaintiff is entitled to recover the money, if any he advanced to Tuppela, if such money was loaned to Tuppela for his, Tuppela's, use and benefit or at his request.

I instruct you that, if you find from the evidence, that the plaintiff was duly admitted to practice as an attorney at law in the courts of the State of Oregon, the presumption of law is that he is a capable and efficient attorney, and the further presumption follows that he, the plaintiff, if he was not prevented by his discharge by defendant Tuppela from prosecuting the action against the Chichagoff

Mining Co. by the act of defendant; provided that you find he was prevented by the action of the defendant, the presumption, under the law, is that he would have been successful in such action, either by his own efforts or by the efforts of other attorney whom he might have, under said contract, associated with him.

I instruct you that certain testimony of J. H. Cobb, with reference to the plea of laches on the part of Tuppela, interposed by the Chichagoff Mining Co. in the action of Tuppela vs. the Chichagoff Mining Co., and the ruling of the Circuit Court of Appeals thereon, which was admitted in evidence, was stricken out on motion of the plaintiff during your absence from the courtroom. You are, therefore, not to consider the evidence of Mr. Cobb on that point.

You are instructed that where the relationship of attorney and client exists, it is the duty of the client to, and there is an implied agreement and promise on the part of the client that he, the client, will, procure and furnish to his attorney any [282] and all documents, muniments of title, names of witnesses, addresses of witnesses, and other evidence within his possession or control, necessary or material to the attorney to prepare for, or to substantiate or to prosecute the client's claims.

If you find from the evidence that it was agreed between the plaintiff and defendant that the defendant Tuppela should proceed from Astoria to Alaska and procure certain papers and other evidence mutually deemed necessary for plaintiff to

prosecute Tuppela's claim against the Chichagoff Mining Company, then I instruct you that the plaintiff was entitled to rely upon such agreement or understanding for a reasonable time, without further effort or inquiry; provided you find from the evidence that Tuppela's mental condition was such that a reasonable man would be justified in relying on such promise under all the circumstances of the case, shown by the evidence and which had been brought to the knowledge of the plaintiff at the time the understanding or agreement was entered into.

You are instructed that it is a general rule of law, by which rule of law you are governed in this case, that fraud is never presumed but must be affirmatively proved; on the contrary, the presumption, if any, is in favor of innocence, and the burden falls on him who asserts fraud to establish it by proving every material element of the cause of action by a preponderance of evidence; and in this case you are instructed that the burden is on the defendants to prove that the plaintiff was guilty of any fraud in entering into the contract with the defendant Tuppela.

You are instructed that it is a general rule of law, by which rule you are governed in this case, that where an attorney and client have entered into a contract relative to the performance [283] of services by the attorney on behalf of the client, which is fair on its face, the burden is upon the client to show, if he claims such to be the case, that the attorney committed fraud in entering into such contract with the client; and in this case you are

instructed that the burden is upon the defendants to show that the plaintiff committed fraud in entering into said contract that was entered into by and between him and the defendant Tuppela and that, unless you find that the defendants have sustained said burden by a fair preponderance of the evidence, you should not find that the plaintiff committed any fraud in the entering into of said contract.

You are instructed that it is a general rule of law, by which rule you are governed in this case, that where an attorney and client have entered into a contract relative to the performance of services by the attorney on behalf of the client, the burden is upon the client to show, if he claims such to be the case, that the attorney has been guilty of either negligence or laches in the prosecution of such services as were contemplated under such contract; and in this case you are instructed that the burden is upon the defendants to show that the plaintiff was guilty of either negligence or laches in the prosecution of such services as you find, if any, were contemplated under the contract entered into by and between the plaintiff and the defendant Tuppela and that, unless you find that the defendants have sustained said burden by a fair preponderance of the evidence, you should not find that the plaintiff was guilty of either negligence or laches in the prosecution of said services.

You are instructed that it is a general rule of law, subject to the instructions which I have heretofore given you, that where an attorney and a

client have entered into a contract [284] relative to the performance of services by the attorney on behalf of the client, the burden is upon the client to show, if he claims such to be the case, that the attorney has abandoned the contract; and in this case you are instructed that the burden is upon the defendants to show that the plaintiff abandoned the contract entered into by and between him and the defendant Tuppela and that, unless you find that the defendants have sustained said burden by a fair preponderance of the evidence, you should not find that the plaintiff did abandon said contract.

You will be handed four forms of verdict:

1. That you, the jury, find for the plaintiff on his second cause of action and assess his damages in the sum of \$——; and that you, the jury, find for the plaintiff and against the defendant in the third cause of action, in the sum of \$——, with interest at the rate of six per cent per annum from October, 18, 1921.

2. That you, the jury, find for the defendant on the second cause of action, and that the plaintiff is not entitled to any damages by reason of the facts set forth in the second cause of action; and that you, the jury, further find for the defendant in the third cause of action.

3. That you, the jury, find for the defendant in the second cause of action and that the plaintiff is not entitled to damages by reason of the facts alleged therein; and that you, the jury, further find for the plaintiff in the third cause of action in the

sum of \$——, with interest at the rate of six per cent per annum from October 18, 1921.

4. That you, the jury, find for the plaintiff in the second cause of action and assess his damages in the sum of \$——; and that you, the jury, find for the defendant and against the [285] plaintiff in the third cause of action.

When you retire to your jury-room, after considering the case, you will, by your foreman, sign the verdict which you may have agreed upon and return the same into open court.

And thereupon, and before the jury retired, the plaintiffs, by their counsel, made the following exceptions:

We except to that portion of the charge in which the Court tells the jury that if Tuppela knew that he was not a member of the Alaska bar, then that would not be a defense; and we except to the refusal of the Court to give all of the instructions requested by the plaintiffs.

Sunday, November 12, 1922, 2:30 P. M.

Court convened at request of jury for further instruction.

Plaintiff and counsel for respective parties were present and waived the fact that it was Sunday, the absence of the Clerk of the Court and the calling of the roll of the jury. Whereupon the Court further instructed the jury as follows:

Gentlemen of the Jury:

You have asked me to instruct you on three questions. The first question is—

“If the jury find that there was laxity or fault on part of both parties to suit, for whom should the verdict be rendered on the second cause of the complaint?”

The second question is—

“If the jury finds that there was a laxity on both plaintiff and defendant in living up to the terms of the contract, but that the plaintiff had performed legal services, should the jury find damages for the plaintiff on the second cause of the complaint to the extent of the services performed?”

And the third question is—

“If the jury find that there was laxity or fault on the part of both parties to suit, but unequal in degree, how should a verdict be rendered on the second cause of the complaint.”

[286]

Taking the second question first, I instruct you that the second cause of action of the complaint is for damages alleged to have been suffered by the plaintiff because of the violation of the contract of March 11, 1918, by defendant Tuppela, in that he wrongfully discharged the plaintiff and prevented him, the plaintiff, from carrying out the terms of the contract and receiving the full compensation for services, as provided for in the contract. Plaintiff is not suing in this cause of action, for the value of the services performed by him under the contract. That would come in another action—on what is commonly called a *quantum meruit*, or an action for the value

of services rendered. The value of the services rendered by the plaintiff to the defendant is not an issue in this case and is not to be considered by you except, if you find for the plaintiff, in estimating the damages to plaintiff, the amount of work the defendant would have to perform to complete his contract is to be taken into consideration in connection with the value of the contract, as set forth in the contract. And if you find that the defendant has performed services, of course, the amount of the services performed by him may be considered by you, in connection with the amount of services which he would have to perform as a matter of deduction from such services that he would have to perform.

You are, therefore, not to take, as a measure of damages on this cause of action, the value of the services performed by the plaintiff. In this case, I instruct you that the measure of damages, if you find for plaintiff, is the amount of money which the plaintiff would have received had he, the plaintiff, been allowed to complete the performance of the contract, deducting, [287] however, therefrom, the value of the work, labor or services he would have been required to perform under his contract to complete the same; and also deducting therefrom such expenses as he would have been compelled to incur in carrying out his contract, if any are shown.

Answering the first question, this question is comprehended in the third question, and both may be answered as one. I instruct you that when the

relation of attorney and client exists, it is requisite that there should be mutually the utmost frankness, candor, trust and confidence between them, and where there arises between them distrust or lack of confidence reasonably to be inferred from the conduct of either, then the party responsible for the reasonable lack of confidence or distrust is the party at fault. For that reason, all the facts, circumstances and conditions concerning the relations of the parties to this action—that is, the defendant Tuppela and the plaintiff Mathison, were admitted in evidence for your determination whether the defendant Tuppela, without justification, or wrongfully, discharged plaintiff, or whether the plaintiff wrongfully abandoned the contract.

There is in this case no evidence of a formal dismissal of the plaintiff from the services of the defendant, and the question as to whether he was discharged must be inferred by the jury one way or the other from the circumstances surrounding the case and the actions of the parties. The plaintiff claims that he was discharged by the defendant Tuppela and bases his contention on the acts of the defendant Tuppela in connection with the case, which he says and which he insists, amount to a discharge. It, under these conditions, becomes your duty to determine, from the facts and circumstances and conditions produced in evidence, whether or not the acts of defendant Tuppela were such as would [288] lead a reasonable man, under the circumstances, to believe that he was discharged. If you find from the evidence that

they were such acts of the defendant Tuppela, as to lead a reasonable man to believe that he was discharged, then it would be your duty to find that he, the plaintiff, was discharged. If they were not, your duty would be to find that he was not discharged.

The second question arising, if you find that the plaintiff was discharged by the defendant, is, was the discharge wrongful or without sufficient cause? In the consideration of this question, you should consider whether or not the acts of the plaintiff were such as to cause a reasonable man, being a client, to lose confidence in the promptness, ability and fair dealing of his attorney. If they were, the discharge would not be wrongful or without sufficient cause. On the other hand, if such acts were not such as to make a reasonable man to lose confidence in the promptness, skill and ability of his attorney, and without such reasonable cause he discharged him, you should find that the attorney was wrongfully discharged.

The burden of proof is on the plaintiff to show the discharge, and first, that the same was wrongful and without sufficient cause. But, if you find from the evidence that the plaintiff was discharged and the defendant, as in this case, by affirmative allegations, seeks to justify the discharge, the burden shifts to the defendant to show the facts concerning such justification.

If, however, you find from the evidence that the actions of both parties were such as to lead to mutual distrust and lack of confidence in the other,

sufficient to authorize a discharge or abandonment, you should consider the primary cause or fault thereof—I say the primary cause or fault—and if such primary [289] cause or fault was in itself sufficient, either to justify the plaintiff in considering himself discharged or in justifying the defendant as a reasonable man under the circumstances in discharging him, you will so find. But if you find from the testimony that the primary cause was not sufficient in itself to warrant a reasonable man in believing that the obligations of the contract were rescinded by the other, then you will consider the further actions and conduct of the parties and determine from such further actions whether the defendant wrongfully discharged the plaintiff or whether the plaintiff was justified in considering himself discharged and abandoned further effort under the contract. If, however, you find from the evidence that the relations of the parties, through mutual fault, was such that there was an entire lack of confidence and trust between them and that both were equally responsible therefor and that such lack of confidence was such as to impair the relations of attorney and client, to the detriment of either of them, and that such arose from the continued fault of both parties, the plaintiff cannot recover in this action even though discharged. If the jury find, however, that both parties were responsible for the severance of the delicate relations of trust and confidence between the attorney and client, but that one of the parties is primarily and solely responsible therefor, or is, to an appreciable

extent, more responsible therefor than the other, then it would be the duty of the jury to find that the party so responsible is the party in fault and find accordingly.

Whereupon, before the jury retired, the defendants, by their counsel, excepted as follows:

Mr. COBB.—We except to the first instruction given in answer [290] to the question, and except to the second for the reason that there are not sufficient facts and circumstances in evidence in connection with Tuppela's conduct, or alleged conduct, in the fall of 1918, to justify the question of discharge going to the jury. [291]

Plaintiff's Exhibit No. 1.

Supreme Court of the State of Oregon.

To All Persons Unto Whom These Presents Shall
Come:

GREETING:

Be it known that as appears by the files and records of this Court

ENOCHE E. MATHISON

was duly admitted and licensed as an attorney at law in all the Courts of this State on the 9th day of July, A. D. 1915.

IN TESTIMONY WHEREOF the Chief Justice of said Court hath hereunto set his hand and caused these presents to be attested by the seal of said Court at the City of Salem, this 9th day of July, in

the year of our Lord Nineteen Hundred and Fifteen.

FRANK A. MOORE,

Chief Justice of the Supreme Court of Oregon.

(Supreme Court Seal) Attest: J. C. MORELAND,

Clerk of said Court.

Plaintiff's Exhibit No. 1. Received in evidence
Nov. 8, 1922, in Cause No. 2115—A. John H. Dunn,
Clerk. By ————, Deputy.

Plaintiff's Exhibit No. 2.

UNITED STATES OF AMERICA,

DISTRICT OF OREGON.

BE IT REMEMBERED, That on the 22d day of November, A. D. 1915, the same being the 19th judicial day of the regular November Term of the District Court of the United States for the District of Oregon, at which was present and presiding the Hon. Chas. E. Wolverton, United States District Judge, for the District aforesaid, the following, among other proceedings, was had in said Court, that is to say: [292]

In the Matter of the Admission of ENOCH E. MATHISON to the Bar of this Court:

Now, at this day, comes C. J. Schnabel, Esq., an attorney of this Court, and moves that Enoch E. Mathison be admitted to the Bar of said Court; and it appearing that said applicant is duly qualified for such admission according to the rules of this Court:

IT IS ORDERED, that he be, and he hereby is, admitted to the Bar of this Court, to practice as an ATTORNEY AT LAW, SOLICITOR IN CHAN-

CERY, and PROCTOR IN ADMIRALTY; and thereupon the said applicant took the oath required and signed the rolls.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that the foregoing is a correct transcript from the journal entry of said Court in the matter of the admission of said Attorney.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at the City of Portland, in said district, this 22 day of November, in the year of our Lord, One Thousand, Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Fortieth.

G. H. MARSH,
Clerk.

By F. L. Buck,
Deputy.

(Seal) 10-cent documentary stamp.

Plaintiff's Exhibit No. 2. Received in evidence Nov. 8, 1922, in Cause No. 2115—A. J. H. Dunn, Clerk.

Plaintiff's Exhibit No. 3.

AGREEMENT.

J. C. CLINTON,
Clerk of Circuit Court.

(Seal)

J. J. BARRETT.

THIS INSTRUMENT, Made this 11th day of March, 1918, by and [293] between John Tupela, of Astoria, Oregon, party of the first part, and

Enoch E. Mathison, of Astoria, Oregon, party of the second part, Witnesseth,

THAT WHEREAS, The party of the first part claims to have interest in several of the mining claims situated at Chichagoff in the Sitka precinct of the Territory of Alaska, more particularly described and named as follows, to wit: "Over-the-Hill" lode mining claim; "Pacific" lode mining claim; "Golden West" lode mining claim; "Rising Sun" lode mining claim; and the "Porphry" lode mining claim, all at Chichagoff in the Sitka precinct of the territory of Alaska, aforesaid, and

WHEREAS, the party of the first part has other interests in other properties at or near Sitka, Alaska, and

WHEREAS, title and interest of the party of the first part to the property or properties aforesaid, is in dispute, and

WHEREAS, the party of the second part is an attorney-at-law, duly licensed to practice, and

WHEREAS, the party of the first part has engaged, retained and employed the party of the second part to act for him and in his stead in all legal matters pertaining to the prosecution of the claims of the party of the first part, in and to the property described above, and to represent him in the Courts of law and equity, and in all other Courts in which it may be necessary for the proper prosecution of said claims, and for the complete settlement and adjustment arising out of said claims or actions instituted thereof,

NOW, THEREFORE, The party of the first part

in consideration of the services to be rendered by the party of the second part, does hereby promise and agree that the party of the second part may receive and recover one-half of the interests in said properties hereinbefore described, or one-half of the net proceeds from the [294] sale of same, or if any damages be recovered from any of the parties claiming interest in said properties, then and in that case the party of the first part agrees and promises to pay one-half of the proceeds collected of said damages.

It is further understood and agreed by and between the parties hereto that the party of the second part may associate any other attorney or attorneys with him as associate counsel in all matters herein, and the party of the second part in consideration of the payments to be made as hereinbefore set forth, promises and agrees to represent the party of the first part in all matters pertaining to his right or rights in the properties aforesaid, and to prosecute any action or suit growing out of same, and in all Courts as he in his judgment shall deem best and proper for the successful consummation of said litigation or claims, and the party of the second part, as attorney for the party of the first part, is hereby authorized and directed to collect any moneys that may be recovered from said interests or action, and to account to the party of the first part in accordance with the terms of this agreement.

IN WITNESS WHEREOF The parties hereto

have hereunto set their hands and seals in duplicate, this 11th day of March, 1918.

JOHN TUPPELA,

Party of the First Part.

ENOCH E. MATHISON,

Party of the Second Part.

Signed and sealed in the presence of

LAURI MOILANEN.

J. J. BARRETT. [295]

State of Oregon

County of Clatsop,—

BE IT REMEMBERED, That on this 11th day of March, 1918, before me the undersigned, a notary public, in and for said County and State, personally appeared the within named John Tuppela and Enoch E. Mathison, who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal, the day and year last above written.

[Notarial Seal]

J. J. BARRETT,

Notary Public for Oregon.

Filed in the District Court, District of Alaska, First Division. July 8, 1922. J. H. Dunn, Clerk.

Plaintiff's Exhibit 1 for Identification.

Exhibit No. 3. Received in evidence November 8, 1922, in Cause No. 2115—A. J. H. Dunn, Clerk.

Plaintiff's Exhibit No. 14.

In the District Court for Alaska, Division Number
One, at Juneau.

No. 1841—A.

JOHN TUPPELA,

Plaintiff,

vs.

CHICHAGOFF MINING COMPANY, a Corpora-
tion,

Defendant.

**REPLY TO AMENDED ANSWER TO
AMENDED COMPLAINT.**

Now comes the plaintiff, by his attorneys, and for
reply to the amended answer of the defendant to
the plaintiff's amended complaint, alleges as fol-
lows:

Reply to the first affirmative defense. [296]

I.

Referring to the second paragraph of the first
affirmative defense, the plaintiff admits that the
"Pacific" and Golden West lode claims therein
mentioned were located by W. R. Hanlon on the
dates specified and that the Rising Sun was located
by the plaintiff on July 22, 1910; but it denies that
the Over-the-Hill claim was located by H. A. Bauer
and alleges in this connection that said claim was
located on March 26, 1906, by plaintiff, Charles
Peterson, W. R. Hanlon and H. A. Bauer.

II.

Referring to the fourth paragraph of said first affirmative defense, the plaintiff admits that on February 12, 1913, William R. Hanlon sold all his right, title and interest to the Pacific lode claim to the defendant, but he denies that the defendant, since said date or at any other time, has been or is the sole owner of the said Pacific lode claim or has been in the sole and undisturbed possession of the same, or of any other or greater interest than an undivided one-half interest.

III.

Referring to the fifth paragraph of the said first affirmative defense, the plaintiff denies that H. A. Bauer was on December 9, 1915, or at any other time the sole owner of the Over-the-Hill lode claim, and he further denies that on said December 9, 1915, the said H. A. Bauer owned any interest whatsoever in and to the said "Over-the-Hill" lode claim. Though it is true that on said date the said H. A. Bauer executed a quitclaim deed to the defendant to said claim, but he denies that the defendant, since said date, or at any other time, has been or is now sole owner of the said Over-the-Hill claim, or in the sole or undisturbed possession of the same. [297]

IV.

Referring to the sixth and seventh paragraphs of said defense plaintiff admits that prior to the 14th day of June, 1914, namely on the 4th day of

June, 1914, he was adjudged to be insane, but he denies all in singular the remaining allegations in said paragraphs contained.

REPLY TO THE SECOND AFFIRMATIVE DEFENSE.

I.

Plaintiff admits that he was adjudged to be insane on the 4th day of June, 1914, but he denies all in singular the further and remaining allegations in said second affirmative defense contained.

And for further reply to the affirmative answers of the defendant, plaintiff alleges:

I.

That it is true that the Pacific lode claim was located on October 24, 1907, in the name of William R. Hanlon, but prior to 1911 plaintiff had acquired from W. R. Hanlon an undivided half interest in the said claim that in the years, 1911, 1912 and to February 12, 1913, the said W. R. Hanlon and the plaintiff were in the joint possession and jointly claiming the said Pacific lode claim, and maintaining their right of possession thereto. That in the year 1912, the said W. R. Hanlon failed to perform his part of assessment work on said claim, but the same was performed by the plaintiff. That thereafter and prior to February, 1913, the plaintiff gave notice to the said W. R. Hanlon of the performance of said work, and that unless he contributed his part thereof, his interest in said claim

would be forfeited to the plaintiff as co-owner. That said W. R. Hanlon failed to contribute his part toward said assessment work and his interest would have become forfeited to plaintiff, but the [298] defendant, as successor in interest to W. R. Hanlon, in March, 1913, paid same to plaintiff.

II.

That the Over-the-Hill lode claim was located on March 26, 1906, by the plaintiff, W. R. Hanlon and one Charles Peterson who were on said date prospecting together under a grub-stake agreement with H. A. Bauer to jointly and equally share all locations made by either. That plaintiff, Charles Peterson and W. R. Hanlon jointly made a discovery upon the said Over-the-Hill and jointly marked the boundaries of the same and completed said location, but at the request of the said W. R. Hanlon, the location notice was posted in the name of H. A. Bauer, but with the distinct understanding and agreement that said claim should be owned and held by plaintiff, Hanlon, Peterson and the said Bauer, in the proportion of one-quarter each, which said agreement was ratified and approved by said Bauer; that thereafter, on January 10, 1907, the said Charles Peterson sold and conveyed his quarter interest to the said H. A. Bauer, who thereupon became the owner of the one-half thereof, but continued to hold the remaining one-half for the use and benefit and in trust for W. R. Hanlon and plaintiff; that plaintiff and the said Hanlon, for the years of 1909, 1910, and 1911 performed all the

assessment work upon said claim. The said Hanlon performing one-quarter thereof, the amount of his interest and plaintiff performing the remaining three-fourths thereof, the said Bauer failing and refusing to perform any of said assessment work or to contribute to the same. That in the year 1912, W. R. Hanlon and plaintiff duly and regularly gave notice to the said Bauer of the performance of said work, and that unless he paid his part thereof within ninety days his interest therein would be forfeited to his co-owners. [299] Said Bauer refused to pay, admitted and acquiesced in said forfeiture and abandoned all further claim to the said Over-the-Hill claim and during the years 1912, 1913, 1914, and 1915, failed and neglected to perform or offer to perform, or to pay or offer to pay any part of the assessment work on said claim, he well knowing during all of said time that his former interest was being claimed under the said forfeiture proceedings and that his successors in interest thereunder were on the faith thereof performing the assessment work necessary to hold and maintain said claim; and the said H. A. Bauer and the defendant, are now estopped to assert any claim to said premises adverse to the title obtained by plaintiff and W. R. Hanlon under said forfeiture proceedings.

III.

That on February 12, 1913, the said W. R. Hanlon quitclaimed to the defendant, an undivided half interest in and to the said Pacific, Over-the-Hill, Rising Sun and Golden West lode claims.

IV.

That thereafter, in the month of March, 1913, as soon as the plaintiff learned of said conveyance, he informed the defendant of all of the above facts and that the said Hanlon did not own an undivided half interest in and to the Over-the-Hill and never at any time owned such half interest and that he owned no interest in the Rising Sun, but because of the confusion and *undertainty* of the record title of some of the said claims, and to avoid litigation, it was then and there agreed between the plaintiff and defendant that the said Over-the-Hill, Pacific, Rising Sun and Golden West claims should thereafter be held and owned in common between the plaintiff and the defendant in the proportion of one-half each, and during said year and until the 4th day of June, 1914, the plaintiff and the defendant were in the joint possession [300] of said claims, claiming and holding the same as equal co-owners, and no other person whatsoever had or asserted any interest therein; that during said year the defendant performed the assessment work upon the Pacific lode claim for the joint use and benefit of the plaintiff and the defendant, and at the express request of the defendant, the plaintiff performed the annual assessment work upon the Over-the-Hill, Rising Sun and Golden West lode claims for the joint use and benefit of plaintiff and defendant; and the defendant is now estopped from asserting and claiming that the plaintiff was not a co-owner with the defendant in and to said claims during the said years, 1913 and 1914.

V.

That plaintiff is an *educated* prospector and is not familiar with the laws relating to the acquisition of titles to mining claims and for that reason did not suppose that it was essential or necessary in order to perfect his title to obtain a quitclaim or other conveyance from H. A. Bauer to his apparent interest by virtue of the location notice having been made in his name to the Over-the-Hill lode claim at the time that the said Bauer expressly acquiesced in the forfeiture hereinbefore alleged; that the defendant in the year 1915 was desirous of applying for patent to the said Over-the-Hill lode claim and knowing the condition of the record title, thereafter on December the 9th, 1915, it obtained from the said H. A. Bauer a quitclaim deed to the same for a nominal consideration, the defendant well knowing that the said Bauer in truth and in fact had no interest therein, but said deed was obtained solely for the purpose of perfecting the record title so that defendant might obtain patent; and said deed was, as a matter of law, obtained for the joint use and benefit of the plaintiff and the defendant, the actual and real owners of said claim.

VI.

Plaintiff further alleges that from the dates of the respective [301] location of the Over-the-Hill, Pacific and Golden West lode claims until February 12, 1913, he was in joint possession of said claims with the persons whose names said claims were located, claiming an interest therein as herein-

before set out: that his ownership of such interest was at all times recognized and admitted and during all of said time plaintiff fully performed his part of the annual work necessary to preserve their possessory rights under the mining laws.

That from the 12th day of February, 1913, until October 1915, he was in joint possession of said claims with the defendant, the defendant recognizing and admitting his right and title as an equal co-owner, and accepting the benefit of his labor thereon, until he was sent to the asylum in June 14, 1914, for the purposes of holding said claims and preserving the possessory rights thereto under the mining laws.

That defendant never asserted any rights adverse to the plaintiff's half interest in and to the said claims until it made the pretended purchase of plaintiff's said interest under the void and pretended sale by W. P. Mills, the pretended guardian of the plaintiff's estate in October, 1915; and defendant by reason of the said facts is now estopped from asserting or claiming that plaintiff was not such co-owner with it in said claims from and after February 12, 1913, to October, 1915.

Replying to the third affirmative defense, plaintiff alleges:

I.

Plaintiff admits that he was adjudged insane on June 4, 1914, and was sent to the Morningside Asylum, for treatment, and was discharged from said asylum on the 19th day of December, 1917. He further admits that at least as early as April, 1917,

the defendant discovered a large body of ore in the Over-the-Hill claim and that the defendant since said date at least has been mining the same. [302] He denies all and singular the other and remaining allegations in said third affirmative defense contained.

II.

Further replying to said answer plaintiff alleges that whatever moneys defendant may have expended in developing said claims and procuring patent, the amount is insignificant as compared with the sums taken therefrom, and all such sums so expended by defendant have long since been fully repaid out of the gold produced and extracted therefrom, and defendant is due and owing the plaintiff upon an accounting and after allowing it all proper charges for its expenditures aforesaid, which plaintiff is now and ever has been and here offers to allow, defendant is due and owing the plaintiff a sum of Five Hundred Thousand (\$500,000) Dollars.

III.

And further replying to said answer, plaintiff alleges:

That the true history and present status of the titles to the five mining claims in controversy herein as follows, viz.:

1st. The Over-the-Hill lode claim was located on March 26th, 1906, by plaintiff, Charles Peterson and W. R. Hanlon in the name of H. A. Bauer for the joint use and benefit of all four each owning an undivided one-quarter thereof; that on January

10, 1907, said Bauer purchased the undivided one-quarter of Charles Peterson, thereby becoming the owner of an undivided one-half, but plaintiff and Hanlon retained their interest; that said Bauer failed and refused to perform or pay for his part of the annual labor on said claim for the years 1909, 1910 and 1911, but such labor for said years was performed by plaintiff and W. R. Hanlon; that in the year 1912, the said Hanlon and plaintiff caused a notice to be given to the said H. A. Bauer under and in accordance with the statute in such cases made and provided, that unless he paid his part of such labor his interest would be forfeited to his said co-owners; that said [303] Bauer failed and refused to pay for his part of such labor and his interest thereby became forfeited to said Hanlon and plaintiff; that said Bauer had personal knowledge of said notice and forfeiture and thereafter acquiesced therein, and abandoned all claim to said mine; that on February 12, 1913, the defendant purchased of W. R. Hanlon, an undivided half interest in said claim, the same being the original one-quarter interest obtained by Hanlon as one of the original locators and one-half of the interest of H. A. Bauer, which had been forfeited to plaintiff and Hanlon the year preceding; that upon said purchase on February 12, 1913, the defendant became an equal co-owner in said claim with the plaintiff and went into joint possession and claiming under the same title with him; that on October 19, 1915, the defendant obtained the pretended deed to the half interest of the plaintiff from the said W. P. Mills under the

void and fraudulent proceedings set out in the plaintiff's complaint; that on December 9, 1915, defendant, though well knowing that said Bauer had no interest and claimed none, but merely for the purpose of perfecting the record title, obtained from H. A. Bauer, for a merely nominal consideration, a quitclaim to the said Over-the-Hill claim. But if said quitclaim deed in fact conveyed any interest, plaintiff alleges that defendant, as a matter of law, obtained it for the joint use and benefit of the plaintiff and defendant; that in the year 1918 the defendant obtained patent to the said Over-the-Hill in its own name, but in trust for plaintiff and defendant.

2d. The Rising Sun lode claim was located by the plaintiff on July 22, 1910; that plaintiff as sole owner performed the annual labor on said claim for the years 1911 and 1912; that on February 12, 1913, W. R. Hanlon, though he had no right, title, or interest in and to said claim, quitclaimed an undivided one-half [304] interest thereof to defendant; that thereafter plaintiff conceded to defendant its claim of an undivided one-half thereof in the settlement and agreement made between them in March, 1913, hereinbefore set out; that said claim also included in the void and fraudulent proceedings hereinbefore set out whereby the said W. P. Mills as pretended guardian of the plaintiff's estate, pretended to convey the plaintiff's interest to defendant.

3d. The Pacific lode claim was located by the said W. R. Hanlon on October 24, 1907; that plain-

tiff thereafter acquired an undivided half interest in said claim from said Hanlon; that defendant purchased of said Hanlon his remaining half interest on February 12, 1913; that plaintiff's half interest in said claim is also included in the void and pretended deed from W. P. Mills to defendant hereinbefore set out.

4th. That the Porphyry Lode claim was located by the plaintiff in 1912; that defendant's claim to the same is solely under the said pretended deed from W. P. Mills.

5th. The Golden West lode claim was located by W. R. Hanlon on July 22, 1910; that plaintiff thereafter acquired from the said Hanlon an undivided half interest in and to said claim; that thereafter on February 12, 1913, plaintiff purchased of said Hanlon his remaining half interest; that interest in said claim is also included in the pretended deed from W. P. Mills to defendant hereinbefore set out.

WHEREFORE plaintiff prays as in his complaint.

JNO. R. WINN and
J. H. COBB,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

John Tuppela, being first duly sworn, on oath, deposes and says: I am the plaintiff above-named. The above and foregoing [305] reply is true as I verily believe.

JOHN TUPPELA.

Subscribed and sworn to before me this the 19th day of November, 1919.

[Notarial Seal]

J. H. COBB,

Notary Public in and for Alaska.

My commission expires June 8, 1923.

Filed in the District Court, District of Alaska, First Division. Nov. 20, 1919. J. W. Bell, Clerk. By L. E. Spray, Deputy.

Plaintiff's Exhibit No. 14. Received in Evidence Nov. 9, 1922, in Cause No. 2115—A. John H. Dunn, Clerk. [306]

Plaintiff's Exhibit No. 15.

THIS CONTRACT AND AGREEMENT, made and entered into this the 9th day of May, 1919, by and between John Tuppela, party of the first part, and John R. Winn and J. H. Cobb, parties of the second part,

WITNESSETH:

1st. The party of the first part has employed the parties of the second part as his attorneys at law, to bring a suit for him against the Chichagoff Mining Co. to recover an undivided half interest in and to the Over the Hill, Rising Sun, Pacific and Golden West lode claims, and the whole of the Porphyry lode claim, and the party of the first part being without any means except the said property, and unable to pay or secure to be paid the costs and expenses of said suit, it is agreed as follows:

2d. The parties of the second part agree to bring and prosecute to final judgment said suit with all

reasonable skill and diligence, and to advance to the party of the first part the necessary costs and expenses of such suit.

3d. In the event of a recovery in said suit, or of a compromise and settlement thereof, the amount recovered, including the amount that may be had for the use of said property by the defendant, as well as the property itself, that is the lode claims, shall be divided as follows: The advances made by the parties of the second part shall be first repaid, and the balance shall be equally divided between the party of the first part, and the parties of the second part, that is to say: After repaying the said advances the party of the first part shall pay to the parties of the second part a sum equal to one-half the amount in money or property recovered in said suit.

4th. The parties of the second part agree to use their best efforts and skill in representing the party of the first part in said suit, and the party of the first part agrees to accept and abide by the advice of the parties of the second part as his attorneys equally interested with him in the success of said suit, [307] including any proposed compromise and settlement.

Witness our hands in triplicate, this May 9th, 1919.

JOHN TUPPELA.

JNO. R. WINN.

J. H. COBB.

Witness:

HENRY LEPISTO.

Plaintiff's Exhibit No. 15. Received in evidence Nov. 9, 1922, in Cause No. 2115—A. John H. Dunn, Clerk.

Plaintiff's Exhibit No. 16.

(Copy.)

WHEREAS, I am the owner of the following described property to wit: An undivided one-quarter interest in and to the Over the Hill mining claim patented;

An undivided one-half interest in and to the Rising Sun claim, unpatented:

An undivided one-quarter interest in and to the Pacific lode claim, all situated on the west side of Chichagoff Island, Alaska, at or near the Chichagoff postoffice.

And Whereas, I have a claim for an accounting against the Chichagoff Mining Company, a corporation, for a large sum of money for ores taken by it from the said Over the Hill and Rising Sun claims;

And whereas, I have confidence in the integrity and ability of J. H. Cobb of Juneau, Alaska, and I am satisfied that it is for my best interest to vest in him the title and management of said property for my use and benefit, and I desire to be relieved of the burden and care of said property;

Now, therefore in consideration of the premises, and for the payment in hand to me of the sum of one dollar, I, John Tuppela of Juneau, Alaska, have this day bargained, sold and conveyed and assigned, and do by these presents, bargain, sell,

convey and assign, unto the said J. H. Cobb, all my right, title and interest in and to the [308] above-described property, and all other property, whether real, personal or mixed, of which I may now be the owner, or may hereafter acquire, including all choses in action, the purpose of this conveyance being to vest in the said J. H. Cobb my entire estate, present and prospective.

The title and property herein conveyed, however, shall be held in trust by the said J. H. Cobb, for the following uses and purposes, to wit:

1st. To enforce the payment and collection of all claims, moneys, and debts of every kind and description, owing or to become owing to me, either by suit, or by compromise as to him may seem best, and to reduce to possession, receive and receipt for, and give quitances for the same.

2d. To sell and dispose of, and execute conveyances of any and all said property both real and personal, on such terms and conditions as may seem to him for my best interest, and to receive the proceeds thereof.

3d. To pay out of the proceeds of said property, and moneys received by him, all debts due and owing or to become due and owing by me, including the compensation that may become due to him for services as my attorney in the case of John Tuppela vs. Chichagoff Mining Company under the contract now existing between us for such services.

4th. To invest all the moneys received by him hereunder or so much as he may deem wise, in in-

terest-bearing securities or otherwise, and to collect the income therefrom; and pay over to me for my personal use, the net income so collected by him or so much thereof as I may require, and to invest the balance. But if the said income shall not equal in any one year the sum of six thousand dollars, he shall upon my request, pay to me so much of the principal of the estate, as to make the sum of Six Thousand Dollars, for my personal use during said year. [309]

5th. At my death, the said Cobb shall pay over and distribute the property held by him hereunder as follows: One-half thereof to my niece, Mrs. Hilma Tuppela Hintsa of Chisholm, Minnesota. And one-half to my niece Sophia Tuppela of Jualaala Jlistara Vaasa, Finland, whose married name I do not know. In the event my said nieces shall not survive me, then the share here provided to be distributed to her, shall be distributed equally among her surviving children.

And thereupon this trust shall be fully executed.

6th. For the services performed hereunder my said trustee shall pay himself a reasonable compensation, which shall in no case, however, exceed the sum of five per cent upon moneys received and paid out by him, including the distribution provided for in the fifth paragraph hereof.

7th. My said trustee shall in no event be liable for any loss due to honest errors of judgment, but only for losses occasioned by or due to malfeasance, misfeasance, or negligence.

8th. My said trustee shall render me a statement

annually of the receipts and disbursements during the year, and of the amount and condition of the trust estate, and how invested, and where the securities and money is kept, and such other information in regard thereto as I may require.

9th. Should the said J. H. Cobb not survive me, then and in that event, I name and appoint his son E. L. Cobb, as his successor, who shall at once succeed to all the title, powers and duties herein vested in and conferred upon the said J. H. Cobb. And upon the demise of either of them, I reserve the right to appoint a successor to the survivor, if I shall so elect. [310]

10th. My said trustee is hereby given the right, at any time, after my said estate has been reduced to possession, and invested, as herein provided, to transfer this trust to such other trustee as we may mutually agree upon, we contemplating in that event, some reliable trust company; the purposes and objects of this deed being first to enable the said Cobb to settle up and terminate to the best advantage the present litigation between myself and the Chichagoff Mining Company, and second, to convert into money, and safely invest the proceeds of such litigation, and third, to relieve myself of all financial care and responsibility for the future.

Witness my hand this the 19th day of August, 1920.

(Signed) JAHAN TUPPELA.

Witnesses:

ADA WHITE.

EMERY VALENTINE.

United States of America,
Territory of Alaska,—ss.

Before me, the undersigned *authority*, on this day personally appeared John Tuppela, personally known to me to be the individual mentioned in and whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein set forth.

In testimony whereof, I have hereunto set my hand and official seal this the 19th day of August, A. D. 1920.

(Signed) ADA WHITE,
Notary Public in and for Alaska.

My commission expires June 30, 1924.

United States,
District of Alaska,
Division No. 1,
Sitka Precinct (No. 4),—ss.

I, W. DeArmond, Commissioner and *ex-officio* Recorder for Recording #796 District of Sitka (No. 4), do hereby certify that the [311] within and foregoing instrument of writing was filed for record in my office on the 21st day of August, A. D. 1920, at — min. past 7 o'clock P. M. and duly recorded in Deeds Record, book 3, on page 420 of the records of the Recording District of Sitka (No. 4) Division No. 1 District of Alaska.

Attest: R. W. DeARMOND,
Commissioner and *ex-officio* Recorder.

Plaintiff's Exhibit No. 16. Received in evidence

Nov. 9, 1922, in Cause No. 2115—A. John H. Dunn,
Clerk.

Plaintiff's Exhibit No. 17.

In the District Court for Alaska, Division No. One,
at Juneau.

No. 1841—A.

JOHN TUPPELA,

Plaintiff,

vs.

CHICHAGOFF MINING COMPANY, a Corpora-
tion,

Defendant.

COUNTER-AFFIDAVIT OF JOHN TUPPELA.

United States of America,

Territory of Alaska,—ss.

John Tuppela, being first duly sworn on oath, deposes and says: I have heard read the affidavit of H. A. Bauer, dated September 5, 1919. It is not true, as stated in said affidavit, that W. R. Hanlon located for the said Bauer the Over the Hill lode claim, nor is it true that said claim was located solely for the said H. A. Bauer; that the true facts concerning the location of said claim are as follows, to wit:

Some time in March, 1906, W. R. Hanlon, Charles Peterson and myself left Sitka, Alaska, together to go prospecting in the region around Chichagoff, Alaska, where discoveries of gold had [312] then

recently been made. H. A. Bauer was not then in Sitka, and I did not see him for some months thereafter. Hanlon claimed to be Bauer's agent under some sort of a grubstake arrangement and furnished the grub for the outfit, and between us three it was understood and agreed that all claims located would be shared in common; that is to say, one quarter each to Bauer, Hanlon, Peterson and myself. On the trip we located five claims, namely: The Aurated, Authentic, Cablegram, Mystery and Over the Hill. The Over the Hill was located in the name of H. A. Bauer by Hanlon as agent. The Mystery was located in my name and Charles Peterson. I do not recall in whose name the other three were located, as they were all shortly thereafter abandoned. The arrangement and understanding between Hanlon, Peterson and myself was thereafter fully confirmed and ratified by the said Bauer by his acting thereon and in accordance with said agreement and his recognition of its binding force and effect. On or about January 7, 1907, Bauer bought out the quarter interest of Charles Peterson in and to said claims and received a deed for the same which was prepared by the said Bauer, and as a consideration therefor conveyed to Peterson a house and lot in Sitka. At the same time that this purchase was made from Peterson, Bauer prepared in his own handwriting a power of attorney, authorizing him to sell my interest in said claims and at his request I executed the same. On the same day he also prepared a power of attorney for Hanlon to sign, authorizing him to sell Hanlon's in-

terest. At the time of this transaction Bauer was endeavoring to organize or promote a company for the purpose of taking over said claims and paying us for the same. [313]

It is not true as is stated in said affidavit that Bauer or anyone else ever employed me to do any assessment work on the Over the Hill claim or paid me for any such assessment work. Nor is it true that I ever received any wages or was promised any wages or board for the work done by me in locating the Over the Hill claim and the other four claims mentioned when on said prospecting trip in March, 1906. Every year from 1906 up to and inclusive of the year 1913, I performed the assessment work on the Over the Hill claim as owner thereof, and had the same placed on record and was in possession of said claim asserting my rights thereto during all said years, all of which was known to both Hanlon and Bauer and neither of them during said time ever at any time objected to my possession and working of said claim, nor did they pretend that I was not *a* owner thereof, and no such claim was ever made by the said Bauer until after the bringing of this suit.

I have also heard read the affidavit of J. L. Freeburn dated September 9, 1919. It is true as stated in said affidavit on the second page thereof that after the Chichagoff Mining Company made the purchase of an undivided half interest from W. R. Hanlon I did represent to the company and to Freeburn that I was an owner not of an undivided half interest, but of an undivided three-quarters interest

in the Over the Hill claim and I also claimed to own in full the Rising Sun claim. After explaining to him as fully as I could the status of the title of which he seemed to be familiar as he knew of my long possession and working said claims. It is not true as stated in said affidavit that said claims were considered valueless as mining claims, for it was known to Freeburn, to me and to others who had investigated the claims that they were on the mineralized zone running through Chichagoff mountain and included the apex of said zone and said zone was then known to be highly mineralized and to contain shoots of very high grade and valuable ore and the Over the Hill and [314] Rising Sun especially were known to be of great value. In the course of the conversation referred to by Freeburn in said affidavit which, to the best of my recollection was in March, 1913, he stated that the company had bought a half interest from Hanlon and that no one else was asserting or could assert any claims to the ground other than the company and myself and he then proposed that each should recognize the other's half interest in the claims and that the company and I should hold them as co-owners in equal amounts and avoid litigation and further mistakes. To this I assented and that year I performed the work upon the Over the Hill, Rising Sun and Golden West and the Chichagoff Mining Company paid me the difference between the amount I had done for our joint use and benefit and the amount it had done on the Pacific and proofs of labor were prepared by the company at its office in Chichagoff for the

work on the Over the Hill as done by me at the joint expense and for the joint use of the Chichagoff Mining Company and myself.

There was no notice whatever served upon me, nor did I have any knowledge of the application of the agreement of a guardian of my estate in the year 1914. I did not learn that W. P. Mills was acting as guardian of such estate, and as such guardian, had attempted to dispose of my property until the fall of the year 1918 when I returned from the Morningside Asylum to Alaska to look after my property. As soon as I reached Sitka, I made inquiries and learned that the Chichagoff Mining Company was then claiming adversely to me through the deed of W. P. Mills. Mr. Mills said he had some money for me, the proceeds of said sale which he would pay over if I would sign a paper which I understood to be a ratification and confirmation of his actions in selling my property. I refused to sign the paper or accept the money or any part of it and as soon thereafter as I could, I consulted counsel [315] and brought this suit.

JOHN TUPPELA.

Subscribed and sworn to before me this 12th day of September, 1919.

J. H. COBB,

Notary Public in and for Alaska.

My commission expires June 8, 1923.

Plaintiff's Exhibit No. 17. Received in evidence Nov. 9, 1922, in cause No. 2115—A. J. H. Dunn, Clerk.

The above and foregoing bill of exceptions contains all the evidence produced by the parties, and all the instructions given the jury, together with all of the exhibits received in evidence, with the exception of Plaintiff's Exhibit No. 4.

And because the above and foregoing matters do not appear of record, I, Thomas M. Reed, the Judge before whom said cause was tried, do hereby certify to the above and foregoing as a true and correct bill of exceptions and order the same allowed, filed and made a part of the record herein.

Signed, sealed and allowed this, the 30th day of December, 1922, and during the term at which said cause was tried.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Jan. 2, 1923. John H. Dunn, Clerk. By W. B. King, Deputy. [316]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHISON,
Plaintiff,
vs.
JOHN TUPPELA et al.,
Defendants.

Assignment of Error.

Now come the defendants, and assign the following errors committed by the Court during the trial and in the rendition of the judgment herein to wit:

I.

The Court erred in denying the *the* motion of the defendants made at the conclusion of the evidence, for an instructed verdict for the defendants on the second cause of action.

II.

The Court erred in refusing the prayer of the defendants to instruct the jury as follows:

“Gentlemen of the Jury: The contract upon which the plaintiff sues in this case, obligated him, as an attorney at law, to bring a suit in behalf of the defendant, John Tuppela, against the Chichagoff Mining Company to recover certain mining property on Chichagoff Island, Alaska. Such a suit could only be brought in the courts of Alaska; therefore, while the contract is silent as to the place where the suit was to be brought, it is to be read and construed as though it expressly provided for the bringing of the suit in the courts of Alaska. It further appears that at the time of making the contract, plaintiff was not qualified in law to bring such suit or perform the services he was obligated to perform under it, nor did he, during the time [317] he claims the contract was in force, or at any time, qualify himself to perform the contract by complying with the laws of Alaska, and becom-

ing a member of the bar of this court. He cannot therefore, recover anything from a breach of said contract, or for any services he may have rendered under it."

III.

The Court erred in instructing the jury as follows:

"It is admitted by the plaintiff in his reply, that he has not been admitted to practice as an attorney at law in the courts of the Territory of Alaska, but it is alleged that he is an attorney and was at all times mentioned in the complaint an attorney authorized to practice in the courts of the State of Oregon where the contract appears to have been made.

I instruct you, as a matter of law, that the courts of the Territory of Alaska, wherein the real property mentioned in plaintiff's complaint and described in the contract is situated, have the sole jurisdiction of an action to recover the mining property therein mentioned; and if the plaintiff was not authorized to practice the profession of attorney at law in the Territory of Alaska at the time of entering into such a contract, he would not be qualified to perform the professional services required by said contract, and if that were so, without any other stipulation being entered into in said contract, it would be a defense to said action.

But if you further find from the evidence that the defendant Tuppela, who entered into said contract of employment with the plaintiff, was informed of such fact of plaintiff not being author-

ized to practice in Alaska at the time of entering into the said contract, and that such contingency, with the knowledge and consent of the said Tuppela was provided for in said contract by authorizing the plaintiff to associate competent [318] counsel, authorized to prosecute the contemplated proceedings, suits or actions with the plaintiff, and without expense to the defendant Tuppela, then the fact that the plaintiff was not authorized to practice law in the Territory of Alaska would be no defense in this action, and if you so find, you will not further consider said defense."

IV.

The court erred in instructing the jury as follows:

"Answering the first question, this question is comprehended in the third question and both may be answered as one. I instruct you that when the relation of attorney and client exists, it is requisite that there should be mutually the utmost frankness, candor, trust and confidence between them, and where there arises between them distrust or lack of confidence reasonably to be inferred from the conduct of either, then the party responsible for the reasonable lack of confidence or distrust is the party at fault. For that reason, all the facts, circumstances and conditions concerning the relations of the parties to this action—that is, the defendant Tuppela and the plaintiff Mathison, were admitted in evidence for your determination whether the defendant Tuppela, without justification, or wrong-

fully, discharged plaintiff, or whether the plaintiff wrongfully abandoned the contract.

There is in this case no evidence of a formal dismissal of the plaintiff from the services of the defendant, and the question as to whether he was discharged must be inferred by the jury one way or the other from the circumstances surrounding the case and the actions of the parties. The plaintiff claims that he was discharged by the defendant Tuppela and bases his contention on the acts of the defendant Tuppela [319] in connection with the case, which he says and which he insists, amount to a discharge. It, under these conditions, becomes your duty to determine, from the facts and circumstances and conditions produced in evidence, whether or not the acts of defendant Tuppela were such as would lead a reasonable man, under the circumstances, to believe that he was discharged. If you find from the evidence that they were such acts of the defendant Tuppela, as to lead a reasonable man to believe that he was discharged, then it would be your duty to find that he, the plaintiff, was discharged. If there were not, your duty would be to find that he was not discharged.”

V.

The Court erred in instructing the jury as follows:

“The second question arising, if you find that the plaintiff was discharged by the defendant, is, was the discharge wrongful or without sufficient cause? In the consideration of this question, you should

consider whether or not the acts of the plaintiff were such as to cause a reasonable man, being a client, to lose confidence in the promptness, ability and fair dealing of his attorney. If they were, the discharge would not be wrongful or without sufficient cause. On the other hand, if such acts were not such as to make a reasonable man lose confidence in the promptness, skill and ability of his attorney, and without such reasonable cause he discharged him, you should find that the attorney was wrongfully discharged.”

And for said errors and others manifest of record, the defendants pray that the judgment of the District Court be reversed, and the cause remanded for such further proceedings as the Appellate Court may direct.

J. H. COBB,

Attorney for Defendants and Plaintiffs in Error.

Filed in the District Court, District of Alaska,
First Division. Dec. 30, 1922. John H. Dunn,
Clerk. [320]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHESON,

Plaintiff,

vs.

JOHN TUPPELA et al.,

Defendants.

Writ of Error.

United States of America,—ss.

The President of the United States to the Judge
of the District Court of the United States for
Alaska, Division Number One, GREETING:

Because in the record and proceedings as also in the rendition of a judgment of a plea which is before you, wherein Enoch E. Matheson is plaintiff and John Tuppela, J. H. Cobb as Trustee for John Tuppela and Grover C. Winn as guardian of the person of John Tuppela are defendants, a manifest error hath happened to the great damage of the said John Tuppela, J. H. Cobb as Trustee for John Tuppela and Grover C. Winn as guardian of the person of John Tuppela, as by their petition doth appear.

We being willing that error, if any hath happened, should be duly corrected, and speedy justice done to the parties in that behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things pertaining thereto, to the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, so that you have the same before said Court on or before thirty days from the date of this writ, so that the record and proceedings aforesaid, being inspected, the said [321] Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and

according to the laws and customs of the United States ought to be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, and the seal of the District Court for Alaska, Division Number One, affixed at Juneau, Alaska, this the 30th day of December, 1922.

[Seal]

JOHN H. DUNN,
Clerk.

By _____,

Allowed this the 30th day of December, 1922.

THOS. M. REED,
Judge.

Filed and served by lodging a true copy with the Clerk of the District Court.

Filed in the District Court, District of Alaska First Division. Dec. 30, 1922. John H. Dunn, Clerk. By _____, Deputy. [322]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHESON,

Plaintiff,

vs.

JOHN TUPPELA et al.,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, John Tuppela, J. H. Cobb, as Trustee for John Tuppela and Grover C. Winn as guardian of the person of John Tuppela, as principals, and B. M. Behrends, as surety, hereby acknowledge ourselves to be indebted and bound to pay to Enoch E. Matheson, the sum of Five Thousand (\$5,000.00) Dollars, good and lawful money of the United States, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, however, that whereas the above bound John Tuppela, J. H. Cobb, as Trustee for John Tuppela, and Grover C. Winn, as the guardian of the person of John Tuppela, have sued out a writ of error in the above-entitled cause from the United States Circuit Court of Appeals, for the Ninth Circuit to reverse the judgment rendered in said cause on the 18th day of November, 1922.

Now, if the said John Tuppela, J. H. Cobb as Trustee for John Tuppela and Grover C. Winn as guardian of the person of John Tuppela shall prosecute their writ of error to effect and pay all such damages and costs as may be awarded [323] against them if they fail to make their plea good, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness our hands this the 30th day of Dec., 1922.

JOHN TUPPELA,

By J. H. COBB,

His Guardian ad Litem.

J. H. COBB,

As Trustee for John Tuppela.

GROVER C. WINN,

As Guardian of the Person of John Tuppela.

B. M. BEHREND.

Approved as to form and sufficiency of surety this the 30th day of December 1922. Said bond to operate as a supersedeas from the filing thereof.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 30, 1922. John H. Dunn, Clerk. [324]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2115—A.

ENOCH E. MATHESON,

Plaintiff,

vs.

JOHN TUPPELA et al.,

Defendants.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States to Enoch E.
Matheson and R. E. Robertson, His Attorney,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error lodged in the clerk's office for the District Court for Alaska, Division Number One, in a cause wherein John Tuppela, J. H. Cobb, as Trustee for John Tuppela, and Grover C. Winn, as guardian of the person of John Tuppela, are defendants in error and you are plaintiffs in error, then and there *to cause*, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 30th day of Dec., 1922.

THOS. M. REED,
Judge.

Service of the above and foregoing writ of error is admitted this the 30th day of December, 1922.

R. E. ROBERTSON,
Attorney for Plaintiff in Error.

Filed in the District Court, District of Alaska, First Division. Dec. 30, 1922. John H. Dunn, Clerk. [325]

In the District Court for the District of Alaska,
Division Number One, At Juneau.

No. 2115—A.

ENOCH E. MATHESON,

Plaintiff,

vs.

JOHN TUPPELA et al.,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

Sir: You will please make up the transcript of the record in the above-entitled and numbered cause, and include therein the following papers, to wit:

1. Complaint, filed Oct. 13, 1921.
2. Second amended answer, filed June 17, 1922.
3. Reply to second amended answer, filed July 22, 1922.
4. Judgment.
5. Bill of exceptions.
6. Assignments of error.
7. Writ of error.
8. Bond on writ of error.
9. Citation.
10. This praecipe.

Said transcript to be made up in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and transmitted to

the clerk of said Court, at San Francisco, California.

J. H. COBB,

Attorney for Plaintiffs and Plaintiffs in Error.

Filed in the District Court, District of Alaska,
First Division. Dec. 30, 1922. John H. Dunn,
Clerk. By ————, Deputy. [326]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to Trans-
script of Record.**

United States of America,
District of Alaska,
Division No. 1,—ss.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 326 pages of typewritten matter, numbered from one to 326, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record as per praecipe of the plaintiffs in error on file herein and made a part hereof, in the cause wherein John Tuppela, J. H. Cobb, as trustee for John Tuppela, and Grover C. Winn, as Guardian of the Person of John Tuppela, are Plaintiffs in Error, and Enoch Mathison is Defendant in Error, No. 2115—A, as the same appears of record and on file in my office, and that said record is by virtue of a

writ of error and citation issued in this cause, and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to One Hundred Forty-nine and 70/100 Dollars (\$149.70), has been paid to me by the attorneys for plaintiffs in error.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled court this 9th day of January, 1923.

[Seal]

JOHN H. DUNN,
Clerk. [327]

[Endorsed]: No. 3973. United States Circuit Court of Appeals for the Ninth Circuit. John Tuppela, J. H. Cobb, as Trustee for John Tuppela, and Grover C. Winn, as Guardian of the Person of John Tuppela, Plaintiffs in Error, vs. Enoch E. Mathison, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed January 22, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.